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REPORTS OF DECISIONS

OF THE

PUBLIC SERVICE COMMISSION

First District

OF THE STATE OF NEW YORK

VOLUME VII

January 1, 1916, to December 31, 1916

(Including Memoranda of Cases Decided without the Writing of Opinions,
from January 1, 1916, to December 31, 1916)

PUBLISHED BY THE COMMISSION
NEW YORK
1917

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LAW PRINTING COMPANY

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CASE No. 1875: *In re* PUBLIC SERVICE COMMISSION FOR THE FIRST DISTRICT
vs. NORTHERN UNION GAS COMPANY.

On January 18, 1916, the Court of Appeals handed down a unanimous decision without an Opinion affirming the decision of the Appellate Division of the Supreme Court for the First Department, rendered July 9, 1915, dismissing the mandamus proceedings instituted by the Commission in Case No. 1875 (the so-called *black meter* case) to secure compliance by the Northern Union Gas Company with the Commission's determination expressed in an Opinion adopted October 30, 1914, that the practice of charging consumers two dollars for replacing prepayment meters with *black* meters, or meters of standard type, shall cease.

The Opinion adopted by the Commission on October 30, 1914, was reported at 5 P. S. C. R. [1st Dist. N. Y.] 289; the Opinion of Mr. Justice Platzek of the Supreme Court, New York County, granting the Commission's application for a writ of mandamus was reported at 6 P. S. C. R. [1st Dist. N. Y.] XXV; and the Opinion of the Appellate Division, rendered July 9, 1915, reversing Mr. Justice Platzek and dismissing the writ was reported at 6 P. S. C. R. [1st Dist. N. Y.] lii.

CASE No. 1856: PEOPLE EX REL. NEW YORK AND QUEENS GAS CO. VS. MCCALL,
ET AL.

A decision of the Appellate Division of the Supreme Court, First Department, rendered March 3, 1916 (171 A. D. 580), reversed the Commission's determination in Case No. 1856, requiring the New York and Queens Gas Company to extend its gas mains from Bayside to Douglaston, in the Borough of Queens. An order to that effect was entered by the Commission on March 19, 1915, after the failure of negotiations between the Commission and the Company to carry out the intent of the Opinion adopted by the Commission herein on February 11, 1915, and the application of the Company for a rehearing was denied by the Commission by an order entered April 27, 1915. (For the Opinion and the Order of the Commission of March 19, 1915, see 6 P. S. C. R. [1st Dist. N. Y.] 35 and 187, respectively).

Upon the entry of the Orders, the Company sued out a writ of certiorari, which was granted by Mr. Justice Peter J. Hendrick at Special Term of the Supreme Court, New York County, on April 30, 1915. On February 17, 1916, the matter came on to be argued at the Appellate Division, before Clarke, P. J.; Dowling, Smith, Page and Davis, JJ., whereupon the Court rendered a unanimous decision, annulling the orders of the Commission, as follows:

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PEOPLE EX REL., NEW YORK AND QUEENS GAS COMPANY, RELATOR, vs. EDWARD E. MCCALL, J. SERGEANT CRAM, GEORGE V. S. WILLIAMS, ROBERT C. WOOD AND WILLIAM HAYWARD, COMMISSIONERS CONSTITUTING THE PUBLIC SERVICE COMMISSION OF THE STATE OF NEW YORK FOR THE FIRST DISTRICT, RESPONDENTS.

CERTIORARI to review an order of the Public Service Commission, First District, requiring the relator to extend its mains and services to Douglaston, including Douglas Manor.

John A. Garver, for Relator.

William H. Van Steenbergh, for Douglaston Civic Association.

Arthur Du Bois, for Respondents.

SMITH, J.:

The New York and Queens Gas Co. has its headquarters and manufacturing plant in Flushing, L. I., and is at present engaged in supplying that town and the adjoining town of Bayside with gas. East of Bayside a marsh bisected by a navigable creek extends for somewhat over a mile, and east of this marsh are situated the towns of Douglaston and Douglas Manor. The order of the Public Service Commission reads in part as follows:

"ORDERED that the New York and Queens Gas Company, be and hereby is directed to extend its mains and gas services in such a manner as may be required reasonably to serve with gas that community lying in the Third Ward of the Borough of Queens, City of New York and known as Douglaston, including Douglas Manor."

It is the propriety of this order that it is sought to have reviewed in this proceeding.

The Public Service Commissions Law, section 66, subd. 2, empowers the Commission:

"To order reasonable improvements and extensions of the works, wires, poles, lines, conduits, ducts and other reasonable devices, apparatus and property of gas corporations, electrical corporations and municipalities."

We have no doubt that under this law the question remains for the court to determine, upon the review of the determination of the Public Service Commission, whether the extension ordered was a reasonable extension. This question must be considered in the aspect, first, of the needs of the community, and, second, of the burden placed upon the company.

First: Douglaston and Douglas Manor have about 230 houses built. The place is supplied with electric light, so that the gas in question will not be required for illuminating purposes but only for the purpose of cooking and possibly for heating, during the summer months. None of the houses which have been erected are piped for gas, indicating that it was not the expectation of those who built the same that gas would be furnished. If this gas were needed for illuminating purposes as well as for heating and cooking, the necessity would be much more imperative and an entirely different question might be presented.

Second: For a distance of five miles from the gas house in Flushing to the end of the main at Bayside the mains of the company would have to be changed and 6-inch pipes substituted for 4-inch pipes which now exist. For a mile from the end of the main in Bayside there will be no consumers of gas, as the mains pass through marsh land where there are no residences. From the records of the company it appears that for the gas furnished the manufacturing and distributing expenses amount to 72.7¢ per thousand feet. This does not include any interest upon the moneys invested, and the Company has never declared a dividend. This leaves 27.3¢ per thousand feet upon

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the price of \$1 per thousand feet which the company is authorized to charge. A very liberal estimate of the gas which will be consumed in the houses already constructed in Douglaston, Douglas Manor and Little Neck has been given as 6,075,000 cubic feet. Upon this estimate at 27.3¢ per thousand there will be an income to the company over and above the cost of manufacturing and distributing of about \$1,660 per year. This, as before said, allows nothing for interest upon bonds or dividends upon stock. The stock of the company is presumably all taken. It has a bonded debt of \$800,000, and presumably it must borrow the moneys necessary for the new construction required. Those moneys I am satisfied would amount to between \$60,000 and \$70,000. Assuming, for the argument, the smaller amount, the interest upon \$60,000 at 5% amounts to \$3,000. This would only be about one-half repaid by the \$1,660, the return from the gas furnished at Douglaston. The balance, or about \$1,500, would be a burden upon the company which must be paid out of other income from other customers. It is undoubtedly true that it is not necessary that the first return from an extension should be large, provided there is reasonable ground to foresee that within a reasonable time the return from the investment is going to be large enough to cover the expenses and the interest upon the moneys required to make the same. The promise here is so remote that it does not seem to us reasonable to require this company to make this expenditure for this construction, in view of the fact that the only requirement for gas is for cooking and heating in the summer months and that the place is already supplied with electricity for illumination.

We are not unmindful of the obligations owing by a public service corporation to serve well the entire community through which it has a franchise, but the statute has defined the extent of its obligation as requiring a reasonable effort so to do. Our attention has been called to the statement of the Commissioners at the time that this determination was made as to the representations made by the Consolidated Gas Co. before the Commission when application was made by that company for permission to buy the stock of the relator. Whatever inference might be drawn from those statements as to the reasons which influenced the Commissioners in making the determination hereunder reviewed, we are of the opinion that the facts presented by the record do not present a reasonable justification for the order made.

The determination of the Commission must, therefore, be annulled without costs, and the application of the petitioners denied.

ALL CONCUR.

CASE No. 1291: PEOPLE EX REL. PUBLIC SERVICE COMMISSION V. INTERBOROUGH RAPID TRANSIT COMPANY.

On April 14, 1916 the Appellate Division of the Supreme Court, First Department, (172 App. Div. 324), handed down a unanimous decision affirming a judgment rendered at Special Term of the Supreme Court, New York County, denying the application of the Commission for a writ of mandamus to enforce the Commission's Order in Case No. 1291 directing the Interborough Rapid Transit Company to make certain improvements in train service on its subway rapid transit railroad.

The Order of the Commission, entered January 7, 1913, was reported at 4 P. S. C. R. [1st Dist. N. Y.] 1 and the opinion of Mr. Justice Edward G. Whitaker, of the Supreme Court, New York County, rendered June 4, 1915, which denied the application for a writ of mandamus, was reported at 6 P. S. C. R. [1st Dist. N. Y.] 1.

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Upon appeal by the Commission from the decision of the Supreme Court the matter was argued at the Appellate Division on March 3, 1916, before Clarke, P. J., Laughlin, Scott, Smith, and Page, J. J., whereupon a decision against the Commission was rendered as follows:

Appeal by the Public Service Commission of the First District from an order of the Special Term of the Supreme Court denying its application for a writ of mandamus to compel the respondent the Interborough Rapid Transit Company to obey an order made by appellant, and dismissing the proceeding.

HENRY H. WHITMAN (George S. Coleman with him on the brief) for Appellant.

HENRY J. SMITH, for Respondent.

LAUGHLIN, J.:

The application for the writ is based on the provisions of §57 of the Public Service Commissions Law, which authorize and require the Commission whenever it "shall be of opinion" that a common carrier, railroad, or street railroad corporation "is failing or omitting or about to fail or omit to do anything required of it by law or by order of the Commission or is doing anything or about to do anything or permitting anything or about to permit anything to be done, contrary to or in violation of law or of any order of the commission", to direct its counsel "to commence an action or proceeding in the Supreme Court * * * for the purpose of having such violations or threatened violations stopped and prevented either by mandamus or injunctions." In so far as the statute gives a remedy by mandamus, it prescribes the procedure *prior* to the issuance of the writ. No alternative writ is authorized for the determination of controverted facts. The court is required in all cases, whether there is an appearance or answer by the corporation against which the proceeding is instituted, or whether it defaults, and whether the application be in an action for an injunction, or in a proceeding for a writ of mandamus, to inquire immediately and summarily into the facts and circumstances and grant final judgment, either dismissing the action or proceeding or directing that "a writ of mandamus or an injunction or both issue as prayed for in the petition or in such modified or other form as the court may determine will afford appropriate relief." The duty was enjoined on the respondent by §26 of the Public Service Commissions Law to furnish "such service and facilities as shall be suitable and adequate and in all respects just and reasonable." Section 56, sub. 1 of said law made it the mandatory duty of the respondent to "obey, observe and comply with every order made by the commission, under authority of this chapter so long as the same shall be and remain in force", and provides a penalty not exceeding \$5,000 for a violation of any of the provisions of the Public Service Commissions Law, and for a failure or omission or neglect to obey, observe or comply with any order or direction or requirement of the Commission, and provides that in case of a *continuing* violation, every day's continuance thereof shall be deemed a separate and distinct offense; and subdivision 2 of said Section declares that the officers and agents of a corporation who fail to obey, observe and comply with any provision of any order of the Commission shall be guilty of a misdemeanor. Section 49, subdivision 2 of the Public Service Commissions Law, provides among other things as follows: "Whenever the commission shall be of opinion, after a hearing, * * * that the regulations * * * or service of any such common carrier. * * * are unjust, unreasonable, unsafe, improper or

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inadequate, the commission shall determine the just, reasonable, safe, adequate and proper regulations * * * and service * * * and prescribe the same by order * * * and thereafter it shall be the duty of every common carrier * * * to observe and obey each and every requirement of every such order so served upon it, and to do everything necessary or proper in order to secure absolute compliance with and observance of every such order by all of its officers, agents and employees." On the 7th day of January, 1913, the Commission, pursuant to the statutory provisions last quoted, made an order requiring the respondent, among other things, to "operate daily, including Sundays and holidays, on all subway express and local tracks in each direction, past every two successive stations on the express tracks and every three successive stations on the local tracks during all hours of the day and night in each twenty minute period, beginning on the even hour, twenty minutes past the hour and forty minutes past the hour (a) a sufficient number of trains and cars to provide a number of seats at least equal to the number of passengers, or (b) the maximum number of trains and cars that can be operated." As authorized by §23 of the Public Service Commissions Law, the order required the respondent to notify the Commission whether it accepted and would obey the terms thereof and it did accept and promise to obey the terms of the order. The order, the enforcement of which by mandamus is sought merely prescribes the *general continuous* duty of the respondent with respect to service as a common carrier.

The maximum service which it is possible for respondent to render is thirty-three local trains of six cars each, and the same number of express trains of ten cars each, per hour. When the proceeding was instituted, the maximum service was being regularly maintained about six hours per day. The evidence fairly shows that the respondent could not with safety to the public, to its employees, and to its property, furnish the maximum service *continuously*. The evidence further shows that the respondent, after accepting the order, took steps to comply therewith, and has ever since supervised the service with a view to complying with the order but as economically as possible.

The petition on which the proceeding was instituted was verified on the 18th day of January, 1915, and in it violations of the order were charged generally on the 17th and 20th days of November, 1914, with respect to both local and express service in each direction. Prior to the hearing which commenced on the 14th day of April, 1915, a bill of particulars of these violations was furnished by the attorney for the petitioner, and therein the alleged violations on November 17th were limited to south bound express trains past the 96th Street and 72nd Street stations in the three twenty minute periods between 10 A. M. and 11 A. M.; and to north bound express trains past the same stations in the single twenty minute period between 4 and 4.20 P. M.; and on November 20th to south bound express trains past the Grand Central and 14th Street stations in the twenty minute period between 11.20 and 11.40 P. M., and north bound express trains past 72nd Street and 96th Street stations in the two twenty minute periods between 11 and 11.20 P. M. and 11.40 and Midnight, and the south bound local trains past 66th Street, 59th Street and 50th Street stations in the single twenty minute period between 8 and 8.20 P. M. and north bound local trains past the same stations in the three twenty minute periods between 11 and 11.40 P. M., and 12.20 and 12.40 the following morning. Ordinarily the travel is greatest in the winter. The month of November is known as the "transition period" between the summer and winter schedules and during that month the respondent gradually increases the service. The winter schedule, which substantially increased the service, went into effect on the 30th day of November, 1914, or within the period of two weeks after the alleged violations of the order. On the hearing, the petitioner was permitted to show other violations on the 11th

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and 13th of January, 1915; and in behalf of the respondent, evidence was offered tending to show that at the time the proceeding was instituted and at the time of the hearing, it was maintaining the service required by the order.

The evidence shows, and the fact is manifest, that unless the maximum service is maintained at all times violations of this order may be unavoidable, for the Company has not facilities for maintaining and does not maintain extra trains at the different stations to be added to the service when a count of passengers indicates the necessity therefor to conform to the order; and on extraordinary occasions such as a noted celebration, a parade or a fire, or other public excitement by which crowds of people may be attracted to a given section along the route of the Subway and when an unusual number of passengers is received at a given station and particularly stations where connection is made with other carriers, it is evident that the service may become seriously congested temporarily. It is likewise manifest that compliance with the order may be prevented by unavoidable accidents. Attention is drawn to these matters here, not with a view to excusing the respondent from complying with the order in so far as concerns violations at issue herein, but to show the impropriety of attempting to enforce compliance with the order by a peremptory writ of mandamus, which is and should be issued only upon the ground that there has been a failure to perform a clear, specific, legal, ministerial duty, absolutely imposed by law which it is incumbent upon the respondent to perform, and which it has failed to perform, and which may still be performed and then the Court directs the respondent to perform forthwith and to make a return to the court of the manner in which the duty has been performed. From the very nature of the writ and the remedy intended to be afforded thereby, the only return that can be made to a peremptory writ of mandamus is in effect a certificate to the effect that the requirements of the writ have been complied with. (High on Extraordinary Leg. Rem. 3rd Ed. Sec. 549). While the Legislature has prescribed in the Public Service Commissions Law a substitute for the provisions of the Code of Civil Procedure with respect to the proceedings prior to the issuance of a peremptory writ of mandamus, it has not, we think, attempted to change the functions of the writ. Section 2072 of the Code of Civil Procedure provides that peremptory writ of mandamus must be made returnable at a special term of the Supreme Court, or at a term of the Appellate Division, to be designated therein; and by §2073 failure to make return is punishable as for contempt of court. The return to a peremptory writ of mandamus must be annexed to a copy of the writ, and must before the expiration of the first day of the term at which it is returnable, either be delivered in open court or filed in the office of the clerk of the county; and, as already observed, it must be to the effect that the writ has been complied with. This necessarily shows that it is not the appropriate remedy to compel performance of a *continuing* duty or duty arising in the future (See Fiero on Sp. Proc. 3rd Ed. p. 1356). It is not the function of a writ of mandamus to operate as a continuing mandatory injunction. In *Lehmaier vs. Interurban St. Ry. Co.*, (177 N. Y. 296) the Court of Appeals defined the functions of the writ of mandamus, as follows: "The proper function of the writ of mandamus is to compel the doing of a specific thing based upon a legal right. It does not require much argument to show that the writ of mandamus is not in this case an appropriate remedy to compel a general course of official conduct or a long series of continuing acts, as it is impossible for the court to oversee the performance of such duties." Compliance with the order with respect to service on the days of which complaint is made in the petition cannot now be compelled. The duty with respect to that service was to run sufficient trains on the days specified and manifestly that duty was not a continuing one which may be performed now. If the respondent had defied the Commission or refused to take steps to comply with the order, doubtless

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it could have been set in motion by mandamus; but it did evidently in good faith proceed to comply with the order. We are, therefore, of opinion that mandamus is not the appropriate remedy for the alleged violations of the order of the Public Service Commission, or for any failure on its part to *fully* comply therewith, and that the proceeding was properly dismissed.

It follows that the order should be affirmed with \$10 costs and disbursements.

ALL CONCUR.

CASE No. 1727: People *ex rel.* The Long Island Railroad Company *vs.* The Public Service Commission of The State of New York for the First District and Edward E. McCall *et al.*, Commissioners.

On July 10, 1916, the Appellate Division of the Supreme Court, First Department (173 App. Div. 780), handed down a unanimous decision sustaining the Commission's determination by an Order entered on July 30, 1914, in Case No. 1727, directing The Long Island Railroad Company to construct a station on the southerly side of South Street, Jamaica. Upon the request of the Company a rehearing was had and the Commission entered an Order on December 11, 1914, confirming the Order of July 30, 1914, except that the date for the completion of the station was extended from November 1, 1914, to March 31, 1915. The principal provisions of the Order as amended were as follows:

That said The Long Island Railroad Company be and it hereby is directed and required to construct, erect and provide for use a new station on the southerly side of South Street, Jamaica, on said company's Old Southern Division, said station to consist of the necessary platforms, shelters and passageways connecting said platforms; said station and its appurtenances to be in all respects safe, adequate and convenient for the service of the public.

* * * * *

That before entering upon the work of constructing said new station, platforms, shelters and other appurtenances said company shall submit to the Commission for its approval plans and specifications of all such proposed work.

That said company shall open said new station for use, and cause trains on said division to stop at said station for the receipt and delivery of passengers on or before the 31st day of March, 1915, and shall continue such use of said station and such stopping of trains at said station thereafter until further order of the Commission.

Upon certiorari proceedings instituted by the Company for a review of the Commission's determination the matter was argued at the Appellate Division of the Supreme Court, First Department, on June 13, 1916, before Clarke, P.J., McLaughlin, Scott, Smith and Page, JJ., who rendered on July 10, 1916, an opinion written by Mr. Justice Page, as follows:

Certiorari to review the action of the Public Service Commission and directing the establishment of a station on the Long Island Railroad at South Street, Jamaica.

LOUIS J. CARRUTHER, for relator.

H. M. CHAMBERLAIN, for respondents.

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PAGE, J.:

The order was made after a hearing before the Public Service Commission, in which witnesses were called in behalf of the petitioners and the relator. The principal complaint of the railroad company is that the establishment of this station, which is seven-tenths of a mile distant from the main Jamaica station, and eighth-tenths of a mile from the Cedar Manor station, will cause a delay in the express service of the railroad, and that as the Long Island Railroad is a steam railroad and not a street surface or interurban road, the regulation of its commutation traffic is peculiarly within the powers of the railroad and not of the State. Citing *People ex rel. N. Y. C. & H. R. R. Co.*, 215 N. Y. 241, 254.

That case related to commutation tickets and the increase of rates, and is not applicable in any way to the present case. The establishment of stations, requiring adequate facilities for the travelling public, is peculiarly within the power of the Public Service Commission delegated by the Legislature. See Sec. 50, Public Service Commissions Law. Unless this discretion is abused, and the order is clearly unreasonable, the Commission's determination should not be disturbed. This order does not attempt to regulate the time within which trains must stop at this station, but merely requires the establishment of the station and leaves the details of operation entirely within the control of the railroad company.

In our opinion the company has not shown that this requirement is unreasonable or unjust, and the writ should be dismissed and the determination of the Commission affirmed, with \$50 costs and disbursements.

ALL CONCUR.

CASE No 1894: *People ex rel. New York & Queens County Railway Company vs. The Public Service Commission of The State of New York for the First District et al.*

On July 10, 1916, the Appellate Division of the Supreme Court, First Department (173 App. Div. 826), handed down another unanimous decision sustaining the Commission's determination in Case No. 1894, by an Order entered on April 30, 1915, denying the application of the New York & Queens County Railway Company for approval of declaration of abandonment of portions of its unconstructed franchise routes on Flushing Avenue and other streets in the Borough of Queens. The Order gave the Company leave to present a new declaration of abandonment covering all the streets named in the declaration which was disapproved except "Flushing Avenue between Ehret Avenue and Jackson Avenue."

The proceedings by the Company to abandon its unconstructed franchise routes followed upon action taken by the Commission by a Resolution adopted December 8, 1914, in Case No. 1726, to compel the Company to construct tracks on Flushing Avenue between Ehret Avenue and Jackson Avenue as required by law. At a meeting of the Commission on January 6, 1914, a proposed Order to require the Company to construct said tracks on Flushing Avenue was lost by a majority vote.

Upon the refusal of the Commission to approve the declaration of abandonment as to Flushing Avenue the Company applied for a rehearing, which was denied on May 14, 1915. Thereupon the Company instituted certiorari proceedings for a review of the determination of the Commission and a writ

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of certiorari was issued out of the Supreme Court, New York County, on May 28, 1915, upon the Order of Mr. Justice Thomas F. Donnelly. Argument upon the writ was had at the Appellate Division on June 6, 1915, before Clarke, P. J., McLaughlin, Scott, Smith and Page, JJ., who rendered, on July 10, 1916 an Opinion written by Mr. Justice Dowling, which is set out in full below.

(For the Order and Opinion of the Commission in Case No. 1894 see 6 P. S. C. R. [1st Dist. N. Y.] 204.)

Writ of Certiorari to review a determination of the Public Service Commission, First District.

ARTHUR G. PEACOCK, for Relator.

H. M. CHAMBERLAIN, for Respondents.

SAMUEL J. ROSENSOHN, for The City of New York.

DOWLING, J.:

The relator, hereinafter called the Company, operates street railways in the Borough of Queens, City of New York. One of its routes runs from the Astoria (or 92nd Street) Ferry, east along Flushing Avenue to Ehret Avenue (a private road) and thence northerly along that avenue to North Beach. Its franchise permitted it to build out on Flushing Avenue as far as its junction with Jackson Avenue and thence to Flushing, to which point its tracks along Jackson Avenue now extend. On December 8th, 1914, the Public Service Commission for the First District (hereinafter called the Commission) passed a resolution reciting the failure of the Company "to construct and operate that portion of its franchise route on Flushing Avenue between Ehret Avenue and Jackson Avenue in the Borough of Queens, as required by law", and directing its counsel "to commence an action or proceeding in the Supreme Court in the name of the Commission for the purpose of having such violations stopped and prevented either by mandamus or injunction." The petition for a writ of mandamus to compel the Company to construct the uncompleted portion of its road on Flushing Avenue, between Ehret and Jackson Avenues, was accordingly prepared and filed, and an order issued out of the Supreme Court, County of Kings, on January 4th, 1915, requiring the Company to answer the petition, and in case of default the writ prayed for was to be issued. An answer was duly interposed, from which it appeared that in the interim and on December 10th, 1914, the directors of the Company had adopted a declaration of abandonment of the franchise route on Flushing Avenue, between Ehret and Jackson Avenues, which was approved by the stockholders on January 13th, 1915, on which day the Company filed with the Commission its petition that the latter approve the declaration of abandonment. The petition in question is based on the ground that "it is not necessary" that a railway be constructed along Flushing Avenue, from Ehret to Jackson Avenues, and along certain streets and avenues not pertinent to the question under consideration. After a full hearing the Commission on April 30th, 1915, made its order disapproving the declaration of abandonment, "with leave to said Company to adopt and present a new declaration of abandonment covering all said portions of route except that in Flushing Avenue between Ehret Avenue and Jackson Avenue, which new declaration of abandonment will be approved by the Commission upon its presentation upon the evidence already adduced." A motion for a rehearing was denied. As the portion of the route along Flushing Avenue was the only one the Company was specially interested

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in abandoning, a writ of certiorari was obtained to review the action of the Commission in denying the desired approval of its abandonment. The application by the Company was made under Section 184 of the Railroad Law (Chapter 481 Laws of 1910; Chapter XLIX Consolidated Laws), the first sentence of which reads: "Any street surface railroad corporation may declare any portion of its route which it may deem no longer necessary for the successful operation of its road and convenience of the public to be relinquished and abandoned." The section then sets forth the procedure to be followed thereupon, including the requirement that the approval of the Commission must be given thereto, to make it effective. In this proceeding the Commission heard witnesses for and against the application. To support it, the Company called its President and experts to show that there was no necessity for the extension in question, in view of the present railway service in the vicinity and as the character of the adjoining territory was such that development in a large degree could not be expected soon, while the convenience of the public was amply served by existing lines, so that this additional two miles of railway were not required. On the other hand residents of East Elmhurst, (which is the section to and through which the line if constructed would run) who testified, were all certain that the convenience of the public would be materially served by the completion of the missing stretch of track and gave reasons for their belief, based on local conditions, with which they were well acquainted. Under these circumstances an issue of fact was presented which it was peculiarly within the province of the Commission to decide and with their determination we should not interfere unless, as was said in *People ex rel. Brooklyn Heights R. R. Co. vs. Wilcox*, 157 App. Div. 698, the evidence preponderates against the determination made by the Commission for "in the interests of the convenience and safety of the public the Legislature vested the Commission with broad discretionary powers and it would require clear and convincing evidence that their determination on the facts was erroneous to warrant the Court in annulling the order." We find in the present proceeding that the evidence does not preponderate against the determination made by the Commission, but in its favor; nor is there any evidence before us to show that the determination on the facts was erroneous. The determination of the Commission will therefore be confirmed and the writ dismissed, with \$50 costs and disbursements to respondents.

ALL CONCUR.

CASE No. 1856: *PEOPLE ex rel. NEW YORK AND QUEENS GAS COMPANY vs. McCALL et al.*

The Court of Appeals by a decision rendered October 3, 1916 (219 N. Y. 84) reversed the Appellate Division of the Supreme Court, First Department (171 App. Div. 580) and sustained the Commission's determination in Case No. 1856, requiring the New York and Queens Gas Co. to extend its gas mains from Bayside to Douglaston and Douglas Manor in the Borough of Queens. The Commission entered an Order to that effect on March 19, 1915, after the failure of negotiations between the Commission and the Company to carry out the intent of the Opinion adopted by the Commission on February 11, 1915. (For the Opinion and the Order of the Commission see 6 P. S. C. R. [1st Dist. N. Y.] 35 and 187, respectively.)

Upon the entry of the Order the Company sued out a writ of certiorari, which was granted by Mr. Justice Peter J. Hendrick at Special Term of the

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Supreme Court, New York County, on April 30, 1915. The Appellate Division of the Supreme Court, First Department, after argument had before it on February 17, 1916, rendered a unanimous decision on March 3, 1916, (171 App. Div. 580), annulling the Commission's determination. From this decision the Commission appealed to the Court of Appeals where the matter was argued on May 22-23, 1916, before Bartlett Ch. J., Cuddeback, Chase, Hogan, Cardozo, Pound and Hiscock, JJ. Whereupon the Court rendered its decision in an Opinion written by Mr. Justice Cuddeback, set out in full below, after a statement of the facts by the Court as follows:

THE PEOPLE OF THE STATE OF NEW YORK *ex rel.* NEW YORK AND QUEENS GAS COMPANY, *Respondent v.* EDWARD E. MCCALL *et al.*, PUBLIC SERVICE COMMISSIONERS, *Appellants.*

APPEAL by the defendants from an order of the Supreme Court, Appellate Division, first department, sustaining a writ of certiorari, and annulling an order of the public service commission of the first district.

Certain residents and property owners of Douglaston and Douglas Manor in the third ward of the borough of Queens, New York City, applied to the public service commission of the first district for an order requiring the relator in this proceeding, the New York and Queens Gas Company, to extend its gas mains and services in such manner as may be necessary reasonably to supply with gas the communities of Douglaston and Douglas Manor. On a review of the proceedings by the Supreme Court at the Appellate Division, the order of the public service commission was annulled. From that determination the residents and property owners have appealed to this court.

Douglaston and Douglas Manor are situated in the northeast corner of the borough of Queens near Little Neck Bay. To the southeast of Douglaston and also within the third ward of the borough is Little Neck, which extends to the borough line. To the west are the communities of Bayside and Flushing which are separated from Douglaston by a salt marsh about half a mile or more wide, and extending a mile inland. Through the middle of the marsh runs a creek navigable for small boats and along each side of the marsh is a high hill. The relator is at present supplying gas to Flushing and Bayside, but its mains and pipes are not sufficient to meet the additional requirements of Douglaston and Douglas Manor. The company's gas plant is located in Flushing about six miles from Douglaston, and it will be necessary to lay a main from the plant to Bayside and carry it from there down the hill, over the marsh and up the hill on the other side to reach Douglaston.

Douglaston and Douglas Manor are supplied with electricity for lighting purposes, and gas is desired mainly for cooking during the summer months. The Appellate Division decided that upon the whole case it was unreasonable to require the relator to extend its services in compliance with the order of the public service commission. Further facts appear in the opinion.

ARTHUR DU BOIS for appellants.

JOHN A. CARVER for respondents.

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CUDDEBACK, J. The public service commissions are authorized by law "to order reasonable improvements and extensions of the works, wires, poles, lines, conduits, ducts and other reasonable devices, apparatus and property of gas corporations, electrical corporations and municipalities." (Pub. Serv. Comm. Law (Cons. Laws, ch. 48), §66.)

Under the authority of this statute the public service commission for the first district made the order requiring the relator to extend its gas mains and services to meet the reasonable requirements of Douglaston and Douglas Manor.

In applying the provisions of this statute the court at the Appellate Division said: "We have no doubt that under this law the question remains for the court to determine upon the review of the determination of the Public Service Commission whether the extension ordered was a reasonable extension."

This statement of the law is quite likely to create a misapprehension as to the power of the court. The court has no power to substitute its own judgment of what is reasonable in place of the determination of the public service commission, and it can only annul the order of the commission for the violation of some rule or law.

The public service commissions were created by the legislature to perform very important functions in the community, namely, to regulate the great public service corporations of the state in the conduct of their business and compel those corporations adequately to discharge their duties to the public and not to exact therefor excessive charges. It was assumed perhaps by the legislature that the members of the public service commissions would acquire special knowledge of the matters intrusted in them by experience and study, and that when the plan of their creation was fully developed they would prove efficient instrumentalities for dealing with the complex problems presented by the activities of these great corporations. It was not intended that the courts should interfere with the commissions or review their determinations further than is necessary to keep them within the law and protect the constitutional rights of the corporations over which they were given control.

The law governing the commissions is well expressed by the Minnesota Supreme Court in *State v. Great Northern Ry. Co.* (153 N. W. Rep 247). It is there said "the order may be vacated as unreasonable if it is contrary to some provision of the federal or state constitution or laws, or if it is beyond the power granted to the commission, or if it is based on some mistake of law, or if there is no evidence to support it, or if having regard to the interests of both the public and the carrier it is so arbitrary as to be beyond the exercise of a reasonable discretion and judgment." (See, also, *People ex rel. Town of Hempstead v. State Board of Tax Comrs.*, 214 N. Y. 594; *People ex rel. Morrisey v. Waldo*, 212 N. Y. 174.)

In *Interstate Commerce Comm. v. Illinois Central R. R. Co.* (215 U. S. 452, 470) the chief judge, after stating the power of the court, continued: "It is equally plain that such perennial powers lend no support whatever to the proposition that we may, under the guise of exerting judicial power, usurp merely administrative functions by setting aside a lawful administrative order upon our conception as to whether the administrative power has been wisely exercised. Power to make the order and not the mere expediency or wisdom of having made it, is the question."

The court at the Appellate Division did not, therefore, have the power to determine that the extension of the relator's gas mains and pipes ordered by the public service commission was unreasonable in the sense that it was an unwise or inexpedient order, but only that it was unreasonable if it was an unlawful, arbitrary or capricious exercise of power.

The relator argues in support of the power of the Appellate Division to

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review generally the reasonableness of the order of the Public Service Commission that the necessary authority is given by the provision with regard to the writ of certiorari contained in section 2140 of the Code of Civil Procedure. That section reads as follows:

"§ 2140. The questions, involving the merits, to be determined by the court upon the hearing, are the following only:

"1. Whether the body or officer had jurisdiction of the subject-matter of the determination under review.

"2. Whether the authority, conferred upon the body or officer, in relation to that subject-matter, has been pursued in the mode required by law, in order to authorize it or him to make the determination.

"3. Whether, in making the determination, any rule of law, affecting the rights of the parties thereto, has been violated, to the prejudice of the relator.

"4. Whether there was any competent proof of all the facts, necessary to be proved, in order to authorize the making of the determination.

"5. If there was such proof, whether there was, upon all the evidence, such a preponderance of proof, against the existence of any of those facts, that the verdict of a jury, affirming the existence thereof, rendered in an action in the Supreme Court, triable by a jury, would be set aside by the court, as against the weight of evidence."

I do not understand that this section of the Code extends the power of the Court beyond the rules laid down in *State v. Great Northern Ry. Co.* and *Interstate Com. Comm. v. Illinois Central R. R. Co.* (*supra*).

It is urged that under the provisions of subdivision 5 of section 2140 the court may set aside the determination of the commission as against the weight of evidence, regarding the same as the verdict of a jury.

The court had occasion to say in *People ex rel. Smith v. Hoffman* (166 N. Y. 462, 476) in construing section 2140 of the Code of Civil Procedure, as applied to the determination of the board of examination under the Military Code: "The review authorized does not substitute the judgment of the civil court for that of the military court upon the evidence or the merits, but inquires into jurisdiction of the subject-matter, the exercise of authority in relation to the subject-matter according to law, the violation of any rule of law to the prejudice of the relator and the like."

Of course, if the court at the Appellate Division had annulled the order of the Public Service Commission and granted a rehearing in the exercise of discretion, its order would not be reviewable in this court (*Barrett v. Third Ave. R. R. Co.*, 45 N. Y. 628), but that is not the case. The court sustained the writ of certiorari and finally annulled the order of the Public Service Commission without granting a rehearing.

The question now is whether or not there was any evidence to show that the order of the public service commission was an unlawful and arbitrary exercise of power. (*Acme Realty Co. v. Schinasi*, 215 N. Y. 495; *People ex rel. Manhattan Ry. Co. v. Barker*, 165 N. Y. 305; *Otten v. Manhattan Ry. Co.*, 150 N. Y. 395.)

There was no dispute as to the basic facts of the case. There was some variation in the estimates of the witnesses as to the cost of iron pipe and the expense of engineering supervision and like matters, but there was no real disagreement as to the cost of the extension of the relator's system of gas distribution, and the increase in revenue that the relator would probably receive therefrom.

The court at the Appellate Division in its opinion summed up the proof on the subject. The court said that the cost of the extension would be between \$60,000 and \$70,000, and that the increased return to the relator from

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the consumption of gas would be about \$1,660 per year, which is only one-half of the interest at five per cent upon the extension.

This is very far from showing that the order of the Public Service Commission was simply an arbitrary and capricious exercise of power. Indeed it was not asserted to be so by the court. The court in annulling the order claimed and exercised the right to review the action of the Public Service Commission and pass generally upon its wisdom and expediency.

In Douglaston and the neighboring territory in the third ward of the borough of Queens covered by the relator's franchise, there are some 332 houses. The occupants of these houses can get no gas unless they are supplied by the relator. It is the duty of the relator to supply their needs if practicable. (*Wisconsin, M. & P. R. R. v. Jacobson*, 179 U. S. 287; *People ex rel. Woodhaven Gas Light Co. v. Deehan*, 153 N. Y. 528.) The cost of the extension is not the only matter for consideration. (*Oregon R. R. & N. Co. v. Fairchild*, 224 U. S. 510, 529.)

The court at the Appellate Division substituted its own judgment for that of the Public Service Commission in determining that the latter's order was unreasonable. This decision if allowed to stand will seriously hamper the commissions in the discharge of their duties, and go far toward defeating the efforts of the legislature to establish agencies to regulate the great public service corporations.

The order should, therefore, be reversed and the order of the Public Service Commission reinstated, with costs in the Appellate Division and in this court.

WILLARD BARTLETT, CH. J., CHASE, HOGAN, CARDOZO and POUND, JJ., concur; HISCOCK, J., not voting.

Order reversed, etc.

CASE No. 1924: *PEOPLE ex rel. NEW YORK CONSOLIDATED RAILROAD COMPANY vs. PUBLIC SERVICE COMMISSION et al.*

The Commission was also sustained by a decision rendered without an Opinion by the Appellate Division of the Supreme Court, First Department, on October 20, 1916, (*Law Journal*, Oct. 21, 1916, page 263), which dismissed a writ of certiorari granted at Special Term of the Supreme Court, New York County, on December 28, 1915, to review the Commission's determination in Case No. 1924. The Commission entered an Order in this case on November 19, 1915, requiring the New York Consolidated Railroad Company, the Interborough Rapid Transit Company and The Long Island Railroad Company to begin to remove from the footpaths of their elevated structures the snow and ice thereon immediately after the snow has ceased to fall and to continue so to do until said snow and ice has been entirely removed. On December 1, 1915, the Commission entered an Order denying the application of the New York Consolidated Railroad Company for a rehearing in the case.

Upon the entry of the latter Order the New York Consolidated Railroad Company sued out a writ of certiorari which was argued at the Appellate Division on October 5, 1916, before Clarke, P. J., McLaughlin, Scott, Dowling and Smith, JJ., with the foregoing result.

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CASE No. 1291: PEOPLE *ex rel.* PUBLIC SERVICE COMMISSION V. INTERBOROUGH
RAPID TRANSIT COMPANY

On November 28, 1916, the Court of Appeals (219 N. Y. 355) handed down a decision sustaining the Appellate Division (172 App. Div. 324) in dismissing mandamus proceedings instituted by the Commission to compel the Interborough Rapid Transit Company to obey an Order entered January 7, 1913. The Order of the Commission directed the Company to make certain improvements in the subway train service.

Upon the failure of the Interborough Rapid Transit Company to comply with the terms of the Order, the Commission filed a petition in the Special Term of the Supreme Court, New York County, which was denied by Mr. Justice Edward G. Whitaker in an Opinion filed June 4, 1915, and an Order July 6, 1915, dismissing the proceedings. An appeal was taken by the Commission to the Appellate Division of the Supreme Court, First Department, but Mr. Justice Whitaker was sustained by a unanimous decision handed down on April 14, 1916.

A further appeal having been taken to the Court of Appeals the matter was argued on November 21, 1916, before Bartlett, Ch. J., Chase, Collin, Cuddeback, Cardozo and Pound, J.J., who sustained the Appellate Division and dismissed the appeal.

The Order entered by the Commission on January 7, 1913, was reported at 4 P. S. C. R. [1st Dist. N. Y.] i. The Opinion of Justice Whitaker, of the Supreme Court, was reported at 6 P. S. C. R. [1st Dist. N. Y.] 1, and the Opinion of the Appellate Division at 7 P. S. C. R. [1st Dist. N. Y.] xx.

The Decision of the Court of Appeals was as follows:

APPEAL from an order of the Appellate Division of the Supreme Court in the first judicial department, entered April 14, 1916, affirming an order entered July 6, 1915, at Special Term of the Supreme Court, New York County, dismissing the petition of the public service commission made under section 57 of the Public Service Commissions Law.

HENRY H. WHITMAN for appellant Public Service Commission.

HENRY J. SMITH for respondent Interborough Rapid Transit Company.

Per Curiam. Although, as provided by Section 57 of the Public Service Commissions Law (Cons. Laws. ch. 48), mandamus may be an appropriate process "for the purpose of having violations, or threatened violations" of any thing required of a common carrier "by law or by order of the commission" "stopped and prevented," and the requirements so directed by mandamus may in our opinion be continuous (*Public Service Commission v. Westchester St. R. R. Co.*, 206 N. Y. 209; *Willcox v. Richmond Light & R. R. Co.*, 142 App. Div. 44; affirmed, 202 N. Y. 315), subject to the further order of the court, we are, nevertheless, also of the opinion that the petition and proof in this proceeding did not require the court as a matter of law to grant the mandamus prayed for by the Commission.

Neither an examination of the petition, nor the proof compels the conclusion that the carrier "is failing or omitting or about to fail or omit to do anything required of it by law or by order of the commission, or is

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doing anything or about to do anything or permitting anything or about to permit anything to be done, contrary to or in violation of law or of any order of the commission * * *." (Public Service Commissions Law, Sec. 57.)

The alleged failures of the carrier to obey the order of the commission are only at specified hours on two days named each about two months before the proceeding was commenced. Such past failures would suggest possible liability of the company for a penalty, rather than that mandamus should be granted in general terms simply requiring that the carrier provide in the future a sufficient number of seats for its passengers at prescribed periods.

Section 57 of the Public Service Commissions Law provides that the final judgment in any action or proceeding shall "either dismiss the action or proceeding or direct that a writ of mandamus or an injunction or both issue as prayed for in the petition or in such modified or other form as the court may determine will afford appropriate relief."

Responsibility is thus expressly placed upon the court by the statute to determine what action shall be taken by it in an action or proceeding.

On any view of the purpose of the statute, there is no such clear legal right to the writ shown in this proceeding as to make the issuing of a mandamus imperative on the court.

The order should be affirmed, with costs.

WILLARD BARTLETT, *Ch. J.*, CHASE, COLLIN, CUDDERBACK, CARDOZO and POUND, *JJ.*, concur; HOGAN, *J.*, absent.

Order affirmed.

THE
PUBLIC SERVICE COMMISSIONS LAW
OF THE
STATE OF NEW YORK

Amendments Enacted during the Legislative Session of 1916

The Public Service Commissions Law, as originally enacted in 1907, will be found at the beginning of Volume I of this series of reports. The law, as amended to the beginning of the legislative session of 1911, will be found in Volume II. The amendments enacted during 1911 and 1912 will be found in Volume III, and the amendments enacted during 1913 and 1914 will be found in Volume IV and Volume V respectively. Printed below are the bills amending the Public Service Commissions Law which were enacted during the legislative session of 1916. No amendments to the Public Service Commissions Law were enacted in 1915.

1. The Donohue-Boylan bill, in relation to extending the jurisdiction of the Public Service Commission for the First District to Bronx County (Assembly Int. No. 10; Assembly Pr. No. 10; Senate Int. No. 52; Senate Pr. No. 52; Senate Rec. No. 245), which, on May 4, 1916, became Chapter 422 of the Laws of 1916, by the signature of Governor Charles S. Whitman. This amendment was made necessary by the enactment of Chapter 548 of the Laws of 1912, passed April 19, 1912, creating a new county called "The County of The Bronx" out of that part of the County of New York which was comprised within the Borough of The Bronx.

2. The Sweet-Marshall bill, in relation to the jurisdiction of the Public Service Commission for the Second District over telephone companies (Assembly Int. No. 1074; Assembly Pr. Nos. 1201, 1630; Senate Int. No. 859; Senate Pr. No. 944; Senate Rec. No. 296), which, on May 4, 1916, became Chapter 423 of the Laws of 1916, by the signature of Governor Charles S. Whitman.

3. The Burlingame bill, in relation to the recovery of penalties or forfeitures under the Railroad Law (Senate Int. No. 1332; Senate Pr. Nos. 1606, 1864; Assembly Rec. No. 514), which, on May 15, 1916, became Chapter 546 of the Laws of 1916, by the signature of Governor Charles S. Whitman.

4. The Brown bill, in relation to charging the regulative expenses of the Public Service Commission for the First District to the State of New York and making all local expenses of said Commission subject to the approval of the Board of Estimate and Apportionment of the City of New York (Senate Int. No. 603; Senate Pr. Nos. 635, 1167; Assembly Rec. No. 136; Assembly Pr. No. 2098), which, on May 15, 1916, became Chapter 572 of the Laws of 1916, by the signature of Governor Charles S. Whitman.

STATUTES AMENDED IN 1916

The matter given below in *italics* is new; the matter in brackets [] is contained in the previous form of the statute but omitted in the amendment.

1. THE DONOHUE-BOYLAN BILL

AN ACT to amend the public service commissions law, in relation to districts.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section three of chapter four hundred and eighty of the laws of nineteen hundred and ten, entitled "An act in relation to public service commissions, constituting chapter forty-eight of the consolidated laws," is hereby amended to read as follows:

§ 3. **Public service districts.** There are hereby created two public service districts, to be known as the first district and the second district. The first district shall include the counties of New York, *Bronx*, Kings, Queens and Richmond. The second district shall include all other counties of the state.

§ 2. This act shall take effect immediately.

2. THE SWEET-MARSHALL BILL

AN ACT to amend the public service commissions law, in relation to determining what telephone corporations are subject to the jurisdiction of the commission.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section ninety-six of chapter four hundred and eighty of the laws of nineteen hundred and ten, entitled "An act in relation to public service commissions, constituting chapter forty-eight of the consolidated laws," as added by chapter six hundred and seventy-three of the laws of nineteen hundred and ten, is hereby amended to read as follows:

§ 96. **Investigations by commission.** 1. The commission may of its own motion investigate or make inquiry in a manner to be determined by it as to any act done or omitted to be done by any telegraph corporation or telephone corporation and the commission must make such inquiry in regard to any act done or omitted to be done by any telegraph corporation or telephone corporation in violation of any provisions of law or in violation of any order of the commission.

2. *The commission may of its own motion or upon complaint of any person or corporation aggrieved investigate and determine whether the property of any corporation or person actually used within the state in the business of affording telephonic communication for hire is of a value exceeding ten thousand dollars.*

3. [2] Complaints may be made to the commission by any person or corporation aggrieved, by petition or complaint in writing, setting forth any act done or omitted to be done by any telegraph corporation or telephone corporation alleged to be in violation of the terms or conditions of its

PUBLIC SERVICE COMMISSION FOR FIRST DISTRICT

franchise or charter or of any order of the commission. Upon the presentation of such a complaint the commission shall cause a copy thereof to be forwarded to the person or corporation complained of which may be accompanied by an order directed to such person or corporation requiring that the matters complained of be satisfied or that the charges be answered in writing within a time to be specified by the commission. If the person or corporation complained of shall make reparation for any injury alleged and shall cease to commit or permit the violation of law, franchise, charter or order charged in the complaint, if any there be, and shall notify the commission of that fact before the time allowed for answer, the commission need take no further action upon the charges. If, however, the charges contained in such petition be not thus satisfied and it shall appear to the commission that there are reasonable grounds therefor, it shall investigate such charges in such manner and by such means as it shall deem proper and take such action within its powers as the facts in its judgment justify.

4. Whenever the commission shall investigate any matter complained of by any person or corporation aggrieved by any act or omission of a telegraph corporation or telephone corporation under this section, it shall be its duty within sixty days after final submission to make and file an order either dismissing the petition or complaint or directing the telegraph corporation or telephone corporation complained of to satisfy the cause of complaint in whole or to the extent which the commission may specify and require.

§ 2. This act shall take effect September first, nineteen hundred and sixteen.

3. THE BURLINGAME BILL

AN ACT to amend the public service commissions law, in relation to the prayer for judgment in an action to recover penalties or forfeitures.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section twenty-four of chapter four hundred and eighty of the laws of nineteen hundred and ten, entitled "An act in relation to public service commissions, constituting chapter forty-eight of the consolidated laws," is hereby amended to read as follows:

§ 24. **Action to recover penalties or forfeitures.** An action to recover a penalty or a forfeiture under this chapter or to enforce the powers of the commission under the railroad law may be brought in any court of competent jurisdiction in this state in the name of the people of the state of New York, and shall be commenced and prosecuted to final judgment by counsel to the commission. In any such action all penalties and forfeitures incurred up to the time of commencing the same may be sued for and recovered therein, and the commencement of an action to recover a penalty or forfeiture shall not be, or be held to be, a waiver of the right to recover any other penalty or forfeiture; if the defendant in such action shall prove that during any portion of the time for which it is

STATUTES AMENDED IN 1916

sought to recover penalties or forfeitures for a violation of an order of the commission the defendant was actually and in good faith prosecuting a suit, action or proceeding in the courts to set aside such order, the court shall remit the penalties or forfeitures incurred during the pendency of such suit, action or proceeding. All moneys recovered in any such action, together with the costs thereof, shall be paid into the state treasury to the credit of the general fund. Any such action may be compromised or discontinued on application of the commission upon such terms as the court shall approve and order. *An action may be maintained by the commission for the whole or any part of the penalties or forfeitures prescribed in this chapter, and judgment may be rendered for the amount demanded in the complaint, or for any less amount, as justice may require.*

§ 2. This act shall take effect immediately.

4. THE BROWN BILL

AN ACT to amend the public service commissions law, by making the regu-
lative expenses of the commission of the first district a state charge,
making all local expenses of such commission subject to the approval of
the board of estimate and amending the same generally.

*The People of the State of New York, represented in Senate and Assembly,
do enact as follows:*

Section 1. Section fourteen of chapter four hundred and eighty of the laws of nineteen hundred and ten, entitled "An act in relation to public service commissions, constituting chapter forty-eight of the consolidated laws," is hereby amended to read as follows:

§ 14. **Payment of salaries and expenses.** 1. [The] *All salaries and expenses* of the [commissioners, counsel to the commission and the secretary to the] commission in the first district shall be audited and allowed by the state comptroller, and paid monthly by the state treasurer upon the order of the comptroller out of the funds provided therefor [. All other salaries and expenses of the commission of the first district shall be audited and paid] *except salaries and expenses paid or incurred in the exercise of the jurisdiction conferred upon such commission by subdivision two of section five and by section one hundred and twenty-three of this chapter, which salaries and expenses last mentioned shall be chargeable to the city of New York and shall be audited and paid* as follows: The board of estimate and apportionment of the city of New York, or other board or public body on which is imposed the duty and in which is vested the power of making appropriations of public moneys for the purposes of the city government shall, [from time to time] on requisition duly made by the public service commission of the first district, *stating the purpose for which such moneys are required,* appropriate such sum or sums of money as the board of estimate and apportionment or such other board or public body may [be requisite and] *deem* necessary to enable such public service commission [it] to do and perform, or cause to be done and performed, the duties in this or in any other act prescribed, and to provide for the expenses and the compensation of the employees of such commission in so far as the same are hereby made chargeable to the city of New

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York [and such appropriation shall be made forthwith upon presentation of a requisition from the said commission, which shall state the purposes for which such moneys are required by it. In case the said board of estimate and apportionment, or such other board or public body, fail to appropriate such amount as the said commission deems requisite and necessary, the said commission may apply to the appellate division of the supreme court in the first department, on notice to the board of estimate and apportionment or such other board or public body aforesaid, to determine what amount shall be appropriated for the purposes so required and the decision of said appellate division shall be final and conclusive; and the]. *The city shall not be liable for any indebtedness incurred by the said commission in excess of such appropriation or appropriations. It shall be the duty of the auditor and comptroller of said city, after such appropriation shall have been duly made, to audit and pay the proper expenses and compensation of the employees of said commission, [other than the counsel and secretary] in so far as the same are hereby made chargeable to the city of New York, upon vouchers therefor, to be furnished by the said commission, which payments shall be made in like manner as payments are now made by the auditor, comptroller or other public officers of claims against and demands upon such city. [; and for the purpose of providing funds with which to pay the said sums, the comptroller, or other chief financial officer of said city, is hereby authorized and directed to issue and sell revenue bonds of such city in anticipation of receipt of taxes and out of the proceeds of such bonds to make the payments in this section required to be made. The amount necessary to pay the principal and interest of such bonds shall be included in the estimates of moneys necessary to be raised by taxation to carry on the business of said city, and shall be made a part of the tax levy for the year next following the year in which such appropriations are made. The said comptroller shall pay the proper salaries and the expenses of the said commission upon its requisition, for the remainder of the fiscal year after July first, nineteen hundred and seven, from any funds that may have been heretofore appropriated for the board of rapid transit railroad commissioners, which appropriation is hereby transferred to the credit of the public service commission for the first district. In case the said appropriation shall not be sufficient to meet such salaries and expenses, the comptroller of said city is hereby authorized and directed to issue and sell revenue bonds of said city, in anticipation of receipt of taxes, as hereinbefore provided.]*

2. All salaries and expenses of the commission in the second district shall be audited and allowed by the state comptroller and paid monthly by the state treasurer upon the order of the comptroller, out of the funds provided therefor.

§ 2. This act shall take effect July first, nineteen hundred and seventeen.

EDITORIAL NOTE

The head-notes or *syllabi*, statements of additional facts, quotations from Orders or from the opinions of Counsel, and other matter preceding the Opinions and decisions of the Commission as set out in this volume, were not parts of the Opinions as adopted by the Commission. They have been added for the convenience of the reader in interpreting the decision or the circumstances thereof.

In the preparation of the *syllabi* every point or proposition discussed in the Opinion adopted has usually been included, whether obviously essential to the precise basis of the particular decision or not. Wherever feasible, the exact language employed in the Opinion has been embodied in the *syllabi*.

Opinions are not written and adopted by the Commission in all matters passed upon. It is the practice of the Commission for the First District to file written Opinions in such contested matters coming before it as seem to require a careful statement of the grounds of the decision or a permanent public record of the facts in relation thereto. Upon *ex parte* or informal applications, written Opinions are sometimes filed, where the facts are complicated or of possible public moment, or where an interpretation of statutes is required. Opinions will appear in the volumes approximately in the chronological order of their adoption. Decisions in connection with which Opinions were not rendered, within the period covered by Volumes one, two and three, are summarized in memorandum form at the end of Volume three and are separately indexed at that point. Thereafter the memoranda of cases in which Opinions are not rendered appear at the end of the bound volume containing the Opinions for the particular period. In cases in which an Opinion is filed at some stage of the proceedings, it often happens that Orders are subsequently entered therein without the writing of Opinions. Therefore, to secure a complete "case record" of any proceeding, not only the index to the Opinions, but also the index to the *memoranda*, at the end of Volume three and subsequent bound volumes, should be consulted.

Under Section 16 of the Public Service Commissions Law all Orders of the Commission are required to be printed in full in the Annual Report of the Commission to the Legislature. Accordingly the Orders adopted are included in this series of Reports, in whole or in part, only when important to an understanding of the Opinion or of the action taken by the Commission.

When any determination of the Commission is passed upon by a Court, State or Federal, the facts in relation to such action are set out in this series of Reports and the Opinion or memorandum handed down by the Court reprinted herein, at the earliest practicable time after the filing of the judicial decision in question. Where practicable, the decision of the Court is set out in connection with the Opinion of the Commission in the particular case judicially passed upon; otherwise it is printed immediately following the *indices*.

Reports or communications prepared by the Commission upon

matters arising by virtue of its functions under the Rapid Transit Act (L. 1891, ch. 4, as am'd) are not included in this series of Reports. Records affecting the Commission's contractual and commendatory powers under the Rapid Transit Act are published in the Annual Reports of the Commission and in the Minutes of its Proceedings.

It is suggested that this series of Reports of Decisions may advantageously be cited as—*P. S. C. R. [1st Dist. N. Y.]*, and that particular Opinions may be cited by their case numbers and by the headings found at the top of the odd-numbered pages or the "short titles" found in the "Table of Cases Reported," which is contained in the *indices*, on page i, *ante*.

The Opinions of the Commission will continue to be published monthly in the present pamphlet form, with any special issues required for the prompt furnishing of the Opinions as rendered. Upon the completion of the standard volume, the same will also be furnished in a law-buckram binding. The Opinions adopted from July 1, 1907, when the Commission took office to January 1, 1912, can be furnished in two bound volumes at \$1.50 per volume, net. The Opinions for the years 1912, 1913, 1914, 1915 and 1916 are contained in volumes three, four, five, six and seven respectively, of this series of Reports, and may be had at the net price of Two Dollars for each volume. The Opinions for the current year, which will comprise volume eight, may be obtained in the monthly pamphlet form, at the price of Two Dollars for the advance sheets, with the bound volume therefor when issued.

New York, December 31, 1916.

JAMES B. WALKER,
Secretary.

In the Matter of the Hearing on the Motion of the Commission Concerning the Regulations and Practices of THE LONG ISLAND RAILROAD COMPANY with Regard to the Hours of Labor of Gatemen, Flagmen, Guards or Other Persons Employed by it at its Highway Crossings within the First District.

CASE NO. 2007

Grade Crossings—Safety Precautions—Increased Supervision of Flagmen Required.—It appearing upon a hearing as to the practices of the L. I. R. R. Co. in the employment of guards or flagmen stationed at crossings for the purpose of preventing accidents that said employes frequently fell asleep while on duty during the late hours of the night or early hours of the morning the respondent is directed to employ additional roundsmen or policemen in order to exercise increased supervision over said employes and to submit to the Commission a statement setting forth when and how such increased supervision will be effected.

Wages of Flagmen—Railroad Corporations—\$1.50 per Day Deemed Insufficient.—Wages of \$1.50 per day for flagmen stationed at railroad crossings in The City of New York are insufficient and should be increased to at least \$2 per day.

Hours of Labor of Flagmen—Railroad Corporations—Reduction of Hours of Labor Recommended.—It is unreasonable to require flagmen stationed at railroad crossings to render continuous service for twelve hours daily and it is recommended that the hours of labor be reduced to eight.

Hearings closed October 15, 1915. Opinion adopted January 6, 1916.

This proceeding was upon the motion of the Commission and was started by the adoption of a resolution, on August 31, 1915, directing a hearing to determine whether the hours of flagmen or other employes of the Long Island Railroad Company stationed at crossings within the First District were so unduly long and in violation of law as to require action by the Commission.

On January 6, 1916, pursuant to an Opinion of Commissioner Cram adopted on that day, the Commission entered an Order providing as follows:

ORDERED that The Long Island Railroad Company increase its police supervision over the men employed by it as grade crossing flagmen or gatemen within the First District of the Public Service Commission, by the employment of additional roundsmen or policemen, and that the said Long Island Railroad Company submit to the Commission for its approval within fifteen days after the service of this order a statement setting forth the manner in which and the time within which the said supervision shall be increased.

FURTHER ORDERED that the Long Island Railroad Company notify this Commission within five days after service upon it of a certified

copy of this order whether the terms of this order are accepted and will be obeyed.

The further facts in the matter appear in the Opinion adopted.

E. J. Crummey, for the Commission.

C. L. Addison, for The Long Island Railroad Co.

CRAM, Commissioner: This was a hearing on motion of the Commission concerning the regulations and practices of The Long Island Railroad Company with regard to the hours of labor of gatemen, flagmen, guards or other persons employed by it at its highway crossings within the First District.

It appeared from the testimony that the crossing flagmen or gatemen are employed 12 hours a day, the day man being on duty from 7.00 A. M. to 7.00 P. M., the night man from 7.00 P. M. to 7.00 A. M. Within the jurisdiction of the Commission there are 131 railroad grade crossings on the Long Island Railroad system where flagmen or gatemen are stationed day and night for the entire year. There are certain additional grade crossings where the railroad company stations flagmen during the summer months.

The principal duty of flagmen or gatemen is to lower and lift the gates at the coming and going of trains and to warn persons traveling upon the highways of the approach of trains. The observations and tabulations made by the Commission's inspectors show the amount of traffic which crosses the principal railroad crossings. Those made at the East New York Avenue crossing, one of the busiest grade crossings on the Atlantic Division of the railroad, show that between 6.00 A. M. and 12.00 midnight on September 8, 1915, 5,641 pedestrians, 83 bicycles, 411 automobiles and 646 vehicles crossed the railroad tracks in both directions, and during the same period of time 283 passenger trains, 26 freight trains and 8 light engines passed the crossing. At the said New York crossing there are two day flagmen and one night man, but at all other grade crossings one day and one night flagman. In section 7 of the Labor Law there are provisions fixing the hours of labor of men employed in the *operation* of railroads such as conductors, engineers, firemen, trainmen, motormen and assistant motormen. Section 8 of the same statute fixes the hours of labor of block system telegraph and telephone operators and signalmen but I find no provision of law fixing or regulating the hours of labor of grade crossing flagmen or of men performing corresponding duties.

It was shown at the hearing that the great evil to be guarded against for the safety of the traveling public is the sleeping flagmen during the late hours of the night and the early hours of the morning. While both highway and railroad traffic are lessened during the night, nevertheless there is always danger at grade crossings. It appears that not infrequently during the night and early hours of the morning freight trains pass certain grade crossings at varying times, and in the rules of instruction prescribed by The Long Island Railroad Company and given to the flagmen, it is provided that "They must be on the lookout for trains at all times. . . .". It is not conclusive from the testimony that the number of hours of employment is directly connected with or the cause of the frequent sleeping of flagmen, for they have been found asleep in the sixth, seventh and eighth hours of their employment. The Superintendent of the Police Department of The Long Island Railroad Company testified that he had direct supervision of all crossing flagmen or gatemen of the company; that he also had under his direction and supervision roundsmen whose duty it was to police and check the flagmen in respect to their duties; that for this purpose he had divided Long Island into seven police districts and that in the district comprising Greater New York City there was a day and night roundsman. The superintendent further testified that during certain hours of the night when a flagman has nothing to do he, naturally, goes into the flag house or shanty at the crossing and dozes and that the time of dozing depends largely upon the train service, that is, if the regular scheduled train service ends at 10:30 P. M. a flagman is just as apt to go to sleep then as he is after midnight. He further testified that he had had ten years experience in supervising the flagmen of The Long Island Railroad Company and when asked whether he knew of any method or means whereby they could be prevented from going to sleep stated that the only method was increased supervision by additional roundsmen. For the safety of the traveling public at railroad grade crossings I therefore recommend that an order be issued requiring The Long Island Railroad Company to increase its supervision over the flagmen especially during late night and early morning hours, and that the Long Island Railroad Company submit to the Commission within a reasonable time for its approval the manner in which and the time within which, its supervision shall be increased.

At the hearing it appeared that of the 309 crossing flagmen

employed by The Long Island Railroad Company in Greater New York, 244 were paid \$1.50 a day. This is an entirely insufficient wage for such employment in the City of New York. It is also my opinion that 12 hours continual service is an unreasonable length of time to require flagmen to remain on duty especially as it appears that they are employed nearly every day in the year. I therefore strongly recommend to The Long Island Railroad Company in the interest of good service that the present number of hours of labor be reduced to eight and that the minimum wage of \$1.50 per day be increased to at least \$2.00.

(STRAUS, *Chairman*, WILLIAMS and HAYWARD, *Commissioners*, concurring.)

In the Matter of the Application of THE CITY OF NEW YORK for a Determination as to the Manner in which the Following Streets shall be Extended across the Tracks of Prospect Park and Coney Island Railroad Company and New York Municipal Railway Corporation, in the Borough of Brooklyn, City of New York: 14th Avenue, West Street, Cortelyou Road.

CASE No. 2037

Grade Crossings—Extension of Streets Across Tracks at Grade—Elevation of Rapid Transit Line.—Upon application by The City of New York under section 90 of the R. R. Law for a determination of the grade of 14th Avenue, West Street and Cortelyou Road across the tracks of the P. P. & C. I. R. R. Co., in the Borough of Brooklyn, HELD—that as the elevation of the Culver Line by the N. Y. M. Ry. Corp. in connection with the "Dual System" of rapid transit will make the elimination of grade crossings impracticable, said streets shall be extended at grade across the surface tracks remaining thereat, but that the actual construction and opening of said streets shall not begin until the operation of the Culver Line has been removed from grade.

Grade Crossings—Safety Precautions—Protection at Crossings to be Prescribed when Streets are Opened.—As it cannot be determined what operation will remain on the surface tracks in Gravesend Avenue after the Culver Line operation has been removed therefrom to the elevated structure in process of construction, the Commission will not prescribe safety requirements at the grade crossings to be created by the extension of three streets across said tracks until said streets have been opened.

Hearings closed January 3, 1916. Opinion adopted January 13, 1916.

Upon the application of The City of New York the Commission adopted a Resolution on December 1, 1915, directing a hearing in this proceeding.

On January 13, 1916, pursuant to an Opinion of Commissioner Williams, who presided at the hearings, the Commission entered the following Order:

An application having been made to the Commission by The City of New York by resolution of the Board of Estimate and Apportionment adopted October 15, 1915, pursuant to Section 90 of the Railroad Law, for a determination as to the manner and method of carrying 14th Avenue, West Street and Cortelyou Road, in the Borough of Brooklyn, across the tracks of Prospect Park and Coney Island Railroad Company and New York Municipal Railway Corporation, and a hearing having been had upon said application on December 22, 1915 and on January 3, 1916 before Honorable George V. S. Williams, Commissioner, W. J. Clark, Assistant Corporation Counsel, appearing for The City of New York, M. B. Hoffman appearing for Prospect Park and Coney Island Railroad Company, New York Municipal Railway Corporation, Prospect Park and South Brooklyn Railroad Company, The Brooklyn Heights Railroad Company and South Brooklyn Railway Company, and due notice of said hearing having been given to the owners of land adjoining the railroad and those parts of the streets to be opened and extended, and it appearing at said hearing of January 3, 1916 that the City of New York and said railroad companies were agreed that the only practical method of carrying the streets across the railroad tracks was to construct them across at the present grade of the tracks, and that the actual opening of the street to travel across the tracks should only take place after the operation of the Culver Line is removed from grade to an elevated structure,

Now, THEREFORE, IT IS
ORDERED AND DETERMINED

(1) That 14th Avenue, West Street and Cortelyou Road be extended and constructed across the tracks of the Prospect Park and Coney Island Railroad Company to cross the said tracks at the grade of the tracks as it now exists, and that the expense of carrying said streets across said tracks be divided as required by law;

(2) That the said construction be begun and carried out immediately upon the removal of the Culver Line operation from the present tracks to an elevated structure which is being constructed pursuant to the general rapid transit plan;

(3) That the grades of the proposed improvement shall be those shown on the map approved by the Board of Estimate and Apportionment of this locality;

(4) That the improvement shall be carried out in the manner provided by Sections 90 to 97, inclusive, of the Railroad Law.

Arthur DuBois, for the Commission.

Lamar Hardy, by *W. J. Clarke*, for The City of New York.

M. B. Hoffman, for Brooklyn Rapid Transit Co.

WILLIAMS, Commissioner: This application is by The City of New York under Section 90 of the Railroad Law for a determination as to how the three streets named shall cross the existing tracks

of Prospect Park and Coney Island Railroad Company. It appeared at the hearing that the only practical method of carrying the streets across was to have them cross at grade. It also appeared that to do this at the present time would create a dangerous grade crossing situation but that under the dual subway contracts provision was made for taking the Culver Line operation from the surface and placing it on an elevated structure which ran over the railroad right of way. It does not clearly appear just what kind of train or car operation will remain after the elevated structure is put into use and for this reason it does not seem possible at the present time to provide in detail for the protection of the grade crossings that would be created by the extension of the three streets. However, the Commission has power at any time to order the protection of the grade crossings by gates or watchmen and when the streets are opened steps should at once be taken for the protection of those using the streets. I recommend the adoption of an order directing that the streets be constructed across the tracks at grade but that the actual construction and opening of the streets begin only after the Culver Line operation is removed from grade.

(STRAUS, *Chairman*, CRAM, HAYWARD and HODGE, *Commissioners*, concurring.)

In the Matter of The Application of JOHN ADIKES and THOMAS ADIKES, composing the firm of J. & T. Adikes, pursuant to the Provisions of Section 27 of the Public Service Commissions Law, for an Order Directing the Construction and Establishment of a Side-Track and Switch Connection Between a Lateral Line of Railroad or Private Side-Track and the Line of Railroad of The Long Island Railroad Company, at Jamaica, in the Borough of Queens, City of New York.

CASE No. 1901

Switch and Side-Track Connections—Steam Railroads—Apportionment of Cost of Elevation of Connection—Only Nominal Compensation Required of Shipper for Construction of Connection on Carrier's Property.—Upon a rehearing pursuant to a decision of the Appellate Div-

ision of the Supreme Court annulling the Commission's Order entered on December 10, 1915, which required The L. I. R. R. Co. to construct a switch connection from its elevated tracks at the Jamaica station with the private siding of the firm of J. & T. Adikes, and remitting the matter to the Commission to enter an Order in conformity with the Opinion of the Court and under section 27 of the P. S. C. Law directing the construction of the connection and "specifying the reasonable compensation to be paid for the construction, establishment and maintenance thereof," HELD,—that under the circumstances appearing herein it would be unfair to require the shipper to pay more than a nominal portion of the cost of construction on the carrier's property.

Switch and Side-Track Connections—Steam Railroads—Grade Connection to Remain until Completion of Elevated Connection.—Pursuant to a decision of the Appellate Division of the Supreme Court in certiorari proceedings herein the respondent carrier will be required to continue the existing grade connection with the private siding of the applicants pending the construction of the elevated connection in place thereof.

Rehearings closed January 24, 1916. Opinion adopted January 27, 1916.

On December 10, 1915, the Appellate Division of the Supreme Court for the First Department rendered a decision annulling the Commission's Order entered on February 5, 1915, in Case No. 1901, and remitted the matter to the Commission for the entry of an Order in conformity with the Opinion of the Court. Pursuant thereto the Commission adopted a Resolution on January 6, 1916, directing a rehearing in the case.

After further hearings had the Commission entered an Order on January 27, 1916, pursuant to an Opinion of Commissioner Williams adopted on that day, embodying the directions of the Court. Both the Order and Opinion adopted are fully set out below.

The Order entered by the Commission on February 5, 1915 and the Opinion of Commissioner Cram in support thereof were reported at *Re Side-Tracks of J. & T. Adikes*, 6 P.S.C.R. [1st Dist. N. Y.] 19. The Opinion of the Appellate Division reversing the Commission was reported at 6 P.S.C.R. —, Advance Sheet No. 12.

The Commission having made an order herein on February 5, 1915 granting the application of John Adikes and Thomas Adikes composing the firm of J. & T. Adikes, pursuant to the provisions of Section 27 of the Public Service Commissions Law, for an order directing The Long Island Railroad Company to construct and establish a sidetrack and switch connection between a lateral line of railroad or private sidetrack and the line of railroad of said The Long Island Railroad Company at Jamaica in the Borough of Queens, City of New York, and said order having been reviewed under a writ of certiorari by the Appellate Division of the Supreme Court, First Department, and an order having been entered and filed by said Court on December 23, 1915 wherein and whereby the determination of the Commission as set forth in its order of February 5, 1915 was annulled and the matter

was remitted to the Commission with authority to make an order limiting the construction required to be made by said railroad company to the construction of the switch connection and sidetrack to the line of its property to connect with a siding of the said John Adikes and Thomas Adikes, the petitioners herein, when constructed to the line of the railroad company's property, in accordance with the plan approved by the Commission, and in the discretion of the said Commission to require said railroad company to maintain the connection with the siding as it now exists until the siding is elevated in accordance with the plan approved by the Commission; and the Commission on January 6, 1916 having adopted a resolution directing a further hearing, and said hearing having been duly held by and before the Commission on January 17, and January 24, 1916, Augustus Van Wyck and Paul F. Lorzor appearing as counsel for the petitioners, Alfred A. Gardner and Louis J. Carruthers appearing as counsel for The Long Island Railroad Company, Vincent Victory, Assistant Corporation Counsel, appearing for The City of New York, and Edward M. Deegan, Assistant to the Counsel to the Commission, attending, and the Commission being of the opinion after said hearing that upon all of the evidence adduced and proceedings had upon the petition herein it is safe and practicable to have a switch connection and sidetrack as hereinafter described established and maintained and that the business to be done thereon is sufficient to justify the construction and maintenance thereof, and that the reasonable compensation to be paid for the construction, establishment and maintenance of the switch connection on said railroad company's property is as herein-after stated, and the Commission being further of the opinion that the sidetrack and switch connection now established, maintained and operated between the line of said railroad company and the property of the petitioners is both safe and practicable and that such existing sidetrack and switch connection should be maintained and operated until the switch connection herein provided for shall have been constructed and put in operation, it is

ORDERED

(1) That said The Long Island Railroad Company be and it hereby is directed and required to construct and establish a switch connection and sidetrack upon its own property, between its railroad at Jamaica in the Borough of Queens, City of New York, and a lateral line of railroad or private sidetrack to be constructed by the petitioners upon their own property, situated on the east side of Tyndall Street between Fulton Street and Archer Place at Jamaica in said Borough of Queens, and across said Tyndall Street and Archer Place to the property line of said railroad company; such switch connection and sidetrack to be constructed and established substantially as shown in red on the drawing entitled "Sketch of Proposed Elevated Siding for J. & T. Adikes, Jamaica, L. I. Scale 1"=100' January 15, 1915" which drawing was received in evidence as Exhibit No. 2 on the hearing had in this matter.

(2) That said The Long Island Railroad Company shall construct and establish said switch connection and sidetrack within three (3) months from the date of the completion of such elevated lateral line of railroad or private sidetrack of the petitioners to the line of the property of said railroad company.

(3) That in so far as the construction and establishment of such elevated lateral line or sidetrack of the petitioners shall necessitate encroachment upon or the use of a public street or highway the said petitioners shall make and prosecute with due diligence application to the proper city authorities for such permit or consent as may be necessary for the construction and establishment thereof.

(4) That this Commission hereby specifies as reasonable compensation for the construction, establishment and maintenance of said

switch connection and sidetrack to be constructed upon the property of said railroad company the sum of one dollar (\$1 00/100) to be paid by the said petitioners to said railroad company within thirty (30) days after said switch connection and sidetrack shall have been completed.

(5) That said switch connection and sidetrack to be constructed by said railroad company and the sidetrack to be constructed by the said petitioners shall be in accordance with plans to be approved by the Commission.

(6) That said The Long Island Railroad Company shall maintain and operate the sidetrack or switch connection now established, maintained and operated between its line of railroad and the property of said petitioners situated on the east side of Tyndall Street between Fulton Street and Archer Place at Jamaica in the Borough of Queens, City of New York, until the switch connection and sidetrack herein provided for shall have been constructed and put in operation.

(7) That this order shall take effect immediately and shall continue in force until changed or abrogated by further order of the Commission.

(8) That said The Long Island Railroad Company shall notify this Commission on or before the 7th day of February, 1916 whether the terms of this order are accepted and will be obeyed.

The further facts in the matter are set forth in the Opinion adopted.

E. M. Deegan, for the Commission.

Augustus C. Van Wyck, for the applicant shippers.

Alfred A. Gardner, and *L. J. Carruthers*, for the respondent carrier.

Lamar Hardy, by *Vincent Victory*, for the City of New York.

WILLIAMS, Commissioner: On February 5, 1915, the Commission adopted an order in this proceeding which provided (1) that The Long Island Railroad Company should construct and establish a switch connection between its railroad and the property of the Adikes situated on the east side of Tyndall Street between Fulton Street and Archer Place, in Jamaica, in accordance with a drawing introduced in the case; (2) that said company should construct such connection within six (6) months; (3) that said company should prosecute with due diligence application for any permit or consent that might be necessary to construct the switch connection over a public highway; (4) that the reasonable compensation for the construction, establishment and maintenance of the switch connection was an amount representing the entire cost of the construction and establishment of so much of the switch connection as should be located upon the Adikes property and one-half of the cost of so much as should be located in, upon or over any public

street or streets, and (5) that the said company should maintain and operate the present grade siding until the elevated connection required by the order should have been constructed and put in operation.

The facts in connection with this case are set forth in the Opinions reported in 6 P.S.C.R. [1st Dist., N. Y.] 19.

The Commission's order was annulled by the Appellate Division of the Supreme Court, First Department, which remitted the matter to the Commission with authority to make an order limiting the construction required to be made by the railroad company to the construction of the switch connection and side track to the line of its property to connect with the Adikes' siding when constructed to the line of the railroad company's property in accordance with the plan approved by the Commission and in its discretion to require the railroad company to maintain the present connection with the siding until the siding is elevated in accordance with the plan approved by the Commission (see opinion in *People ex rel The Long Island Railroad Company v Public Service Commission et al.*, Respondents, handed down December 10, 1915).

The Court, however, upheld the constitutionality of Section 27 of the Public Service Commissions Law and the Commission's jurisdiction, as well as the Commission's determination, "that it is feasible and practicable to maintain the switch connection and that the public interests require it."

After the Commission has determined that it is safe and practicable to require the connection and that the business to be done thereon justifies its construction and maintenance it shall make an order directing the construction and establishment of the switch connection "specifying the reasonable compensation to be paid for the construction, establishment and maintenance thereof, * * *" (P.S.C. Law, Section 27).

Upon this question of compensation the parties have been heard and in view of all the facts and circumstances of this case it appears to me that it would be unfair to require the Adikes to pay more than a nominal portion of the cost of the construction of the switch connection on the railroad company's property.

It appears, among other things, that in 1896 the Adikes moved from the south to the north side of the railroad's right of way and established their plant at the present site at the request of the railroad company's agent at Jamaica; that the Adikes property adjoined

the railroad company's property on the west which the railroad proposed to use for its *permanent* freight yard; that before going over to the north side it had been agreed that the Adikes should have the siding to their property and that a siding was constructed thereto at their expense; that the grain elevator was constructed at a large expense and fitted so as to adjust itself to this siding; that because of the elevation of the company's right of way as part of what is commonly known as its Jamaica Improvement the Adikes will have to construct and maintain, solely at their own expense, an elevated side track not only on their own property but across Archer Place or Tyndall Street to the property of the railroad company; that the City has contributed towards the cost of the said Jamaica Improvement the sum of \$575,000; that great expense will be incurred by the Adikes in adjusting the machinery and equipment of their present plant to the elevated siding; that the switch connection and side track to be constructed can be used by the railroad company in making switch connections with sidings of other shippers; that in Case No. 1707 which was an application of Andrew J. Van Siclen and Gary M. Van Siclen, under Section 27, for an order requiring a switch connection with The Long Island Railroad Company, said company only required the Van Siclens to pay as the reasonable compensation for the construction, establishment and maintenance of the switch connection the cost of the side track and switch connection on the property of the Van Siclens and that an order to that effect was made by the Commission in that case; that in Cases Nos. 1709 and 1489 which were, respectively, applications of Benjamin R. Clayton and the Crew Levick Company, under Section 27, for switch connections a similar practice was followed; that the Adikes are among the largest shippers on the road; and that in Case No. 1378 which was an application of this railroad company for the relocation of its main station at Jamaica, this Commission, on July 16, 1912, approved a plan submitted by the company showing the connection substantially the same as that now required by the Commission (Exhibit 46).

All of the above matters, I think, are proper subjects for consideration in arriving at the amount of compensation to be allowed.

The Court has also decided that the Commission may require the present siding to be continued. This should be done as to deprive the Adikes of this siding is practically to put them out of business.

I, therefore, recommend that an order be made requiring the construction and establishment of this switch connection within three (3) months after the Adikes shall have constructed the side track to the railroad company's property and that the compensation to be allowed shall not exceed \$1.00 of constructing the switch connection.

(STRAUS, *Chairman*, CRAM, HAYWARD and HODGE, *Commissioners*, concurring).

In the Matter of the Hearing on the Complaint of MAX WEISS
against THE NEW YORK STEAM COMPANY, to Determine
Whether its Charge for Making Service Connections is
Proper and Reasonable.

CASE No. 2031

Service—Steam Corporations—Installation of Service Upon Payment of Deposit—Section 12 of Business Corporations Law Construed.—Upon complaint of Max Weiss against the N. Y. S. Co. on account of a charge of \$75 made by the latter for the installation of steam service in the complainant's premises, which were located within 100 feet of the respondent's mains, the respondent contended that said charge was proper and that it was made to cover overhead expenses incurred in the laying of service pipes and connections at a cost of about \$375, the whole of which the respondent had a right to charge to the complainant. HELD,—that under section 12 of the Business Corporations Law, which requires a steam corporation to supply steam to any building within 100 feet of any street main of such corporation upon a "deposit in advance with the corporation of a sum of money sufficient to pay for two months' steam supply and the costs of the necessary connection and of a meter and such other special apparatus as are required for use in connection with such steam supply", the respondent is not authorized to demand a contribution to the expense of laying its service pipes, and that the charge of \$75, being predicated thereon, is improper.

Hearings closed October 27, 1915. Opinion adopted January 27, 1916.

On January 27, 1916, pursuant to an Opinion of Commissioner Hayward adopted on that day, the Commission entered an Order, as follows:

A hearing having been had in this proceeding on October 27th, 1915 before Honorable William Hayward, Commissioner, Max Weiss, the complainant, appearing in person, Karl R. Miner appearing as counsel for The New York Steam Company, and Henry H. Whitman, Assistant Counsel to the Commission, attending, and the Commission being of the opinion that whenever said The New York Steam Company is required by law to sup-

ply steam to the owner or occupant of any building or premises it is unreasonable and illegal for said company to make any charge to said owner or occupant for laying its service pipe in the street, it is

ORDERED that whenever said The New York Steam Company is required by law to supply steam to the owner or occupant of any building or premises it is hereby prohibited from making any charge to said owner or occupant for laying its service pipe in the street; and it is further

ORDERED that this order shall take effect forthwith and that within ten days after service thereof said The New York Steam Company notify the Commission whether the terms of this order are accepted and will be obeyed.

The further facts in the matter appear in the Opinion adopted.

H. H. Whitman, for the Commission.

Max Weiss, the complainant in person.

Karl R. Miner, for the respondent.

HAYWARD, *Commissioner*: On September 14, 1915 the complainant, whose premises are within 100 feet of the street main of the New York Steam Company, made written application for a steam connection as follows:

"New York, September 14, 1915.

New York Steam Company,
No. 140 Cedar Street, New York.

Please furnish the undersigned the work and materials required to install a service pipe at #18 Warren Street.

To cost Seventy-five dollars (\$75.00).

Name, Max Weiss
Address, 18 Warren St."

He almost immediately protested to this Commission against the payment of this \$75. as an unjust exaction, and a formal hearing was held upon his complaint.

It appears that the New York Steam Company makes it a practice to charge prospective customers \$75. where it is not certain that the demand for steam will warrant the installation of the service. It claims that the actual cost of labor and materials in laying service pipes and making the connections averages about \$375. while there is a further necessary expense estimated at \$75. for overhead, such as engineering, superintendence, etc. This latter \$75. they charge to the prospective customer, justifying it on the

ground that they are entitled to charge the whole cost of service pipes and connections to him if they so desire.

The question then is whether a steam corporation may under the statute charge to a prospective customer entitled to service, the whole or any part of the cost of installing a service pipe. It is quite important that a decision should be made so that the citizens may know definitely on what terms this public service may be obtained.

The statute, Section 12 of the Business Corporations Law, seems to me to be quite definite and logical. It provides:

"Any corporation * * * incorporated for the purpose of supplying steam to consumers * * * upon the application in writing of the owner or occupant of any building or premises, within one hundred feet of any street main laid down by any such corporation, and payment by him of all money due from him to it, shall supply steam as may be required for heating such building or premises; * * * but no such corporation shall be required to lay a *service pipe* for the purpose of supplying steam to any applicant * * * unless the applicant, if required, shall deposit in advance with the corporation a sum of money sufficient to pay for two months' steam supply and the costs of the *necessary connections* and of the erection of a meter and such other special apparatus as are required for use in connection with such steam supply, nor unless the applicant shall provide the space and *right of way* necessary for the erection, maintenance and use of *such connections* and apparatus, and signify his assent in writing to the reasonable regulations of the corporation with reference to the supply of steam to consumers."

This seems plainly to mean that a steam corporation must extend its lines and bear the expense of laying its "service pipe" where proper application is made by an owner of premises within one hundred feet of its street mains, but before this obligation attaches it may assure itself in certain ways that the steam will actually be connected and used. If the corporation so desires, it may require that the prospective customer make a deposit to cover two months steam, provide a place for a meter and the necessary connections for service on his premises and even deposit the money therefor. With-

out this protection, a steam corporation might very often be forced to extend its service pipes upon application to premises where the owner had no intention of using the steam but desired the extension for the purpose of enhancing the value of his property, or for some other reason. It is quite proper then that the corporation be allowed to assure itself of an income from the use of its steam before it extends its service pipe, but it is as proper and as plain that no more and no different assurances may be exacted than are provided in the statute and that the cost of the service pipes must be borne by the corporation itself.

If the legislature had meant to allow a steam corporation to exact from its prospective customers the cost of its service pipe, as well as of the connections, it could easily have so stated it. But it did not, and indeed, there would be little use in the statute if it allowed the corporations to put the entire burden upon the consumer. Corporations require no legislative urging to make them lay pipes at another's expense. The underlying idea of this and similar statutes in relation to public service corporations is that in return for the privileges and franchises granted by the state, the corporations must assume the obligation of extending their service at their own expense within certain limits and provided they can be duly assured that the service will be availed of.

I therefore conclude that if this charge of \$75. had been predicated on the probable cost of two months service or on the cost of the erection of a meter or of the connections at the customer's end of the service pipe, it would have been a proper requirement. But the corporation has no right to demand a contribution to the expense of laying its service pipe and therefore the charge in this case is unjustified and illegal.

(STRAUS, *Chairman*, CRAM, WILLIAMS and HODGE, *Commissioners*, concurring.)

In the Matter of the Application of MANHATTAN RAILWAY COMPANY for Authority to Execute a Mortgage or Deed of Trust dated July 1, 1913, to The Equitable Trust Company of New York as Trustee and to Issue Bonds thereunder to the Amount of Principal of \$5,409,000.

CASE No. 1762

Accounts and Funds—Taxes and Discount on Bonds—Charges Accrued Prior to Execution of Lease not Payable by Lessee.—Items of \$718,832.32 for taxes and \$131,242.61 for discount on bonds charged by the lessor, M. Ry. Co., against its surplus account prior to the execution of a lease requiring the lessee, I. R. T. Co., to pay all operating charges, are not payable by the latter under said lease, and said items are not to be deducted from the amount due to the lessee for capital expenditures or from bonds issuable by the applicant for the reimbursement of said expenditures.

Stock and Bond Issue—Purposes for which Securities May be Issued—Validity of Obligation Incurred Prior to Enactment of P. S. C. Law not affected by Subsequent Agreement to Settle the Same.—Upon the hearing on the application of the M. Ry. Co. for the Commission's approval to the execution of a mortgage and the issuance of bonds thereunder, pursuant to the terms of a lease entered into with the I. R. T. Co. prior to the enactment of the P. S. C. Law, to reimburse the lessee for capital expenditures incurred between 1907 and 1913 it appeared that an agreement executed in 1913 provided for the determination of the amount and the settlement of said obligation. HELD,—that the agreement of 1913 did not create a new obligation, and that the bonds issuable under the lease of 1903 cannot be prevented by the Commission.

Stock and Bond Issue—Amount of Securities Issuable—Issue of \$4,523,000 Second Mortgage Bonds Authorized.—Under the circumstances appearing herein the M. Ry. Co. is authorized to execute a second mortgage for \$5,409,000, to issue 4 per cent bonds thereunder in the sum of \$4,523,000 at not less than 82 per cent of par and to apply the proceeds according to the provisions of the Order entered herein to the payment of \$3,708,069 to the lessee, I. R. T. Co., in reimbursement of capital expenditures incurred between October 30, 1907, and June 30, 1913, and \$814,913 to make up expenses of sale and discount on bonds.

Accounts and Funds—Interest and Amortization Charges—Charges of Interest and Sinking Fund Payments on Bonds Herein Authorized to be Determined Upon Accounting.—The Order entered herein authorizing the M. Ry. Co. to issue bonds for reimbursement of capital expenditures incurred by the lessee, I. R. T. Co., will be without prejudice to the right of the City or the lessee, upon an accounting between them, to determine whether interest and sinking fund payments on said bonds were proper rental charges to be deducted from operating revenues or to be paid by the lessee out of a preferential of net profits allowed under the "Dual System" of rapid transit contracts.

Hearings closed January 24, 1916. Opinion adopted January 31, 1916.

This proceeding was upon the application of the Manhattan Railway Company for the approval of the execution of a second mortgage to The Equitable Trust Company of New York as trus-

tee, and for the issue of bonds thereunder for \$5,409,000. On November 18, 1913, the Commission adopted a Resolution directing a hearing in the matter.

On January 31, 1916, pursuant to an Opinion of Commissioner Williams adopted on that day, the Commission entered an Order approving the execution of the mortgage and the issue of bonds for \$4,523,000.

Section 6 of the Order consenting to the inclusion in the mortgage of the certificate for elevated extensions granted by the Commission on March 19, 1913, to the *Manhattan Railway Company* was inadvertently made to read that such certificate had been granted the "Interborough Rapid Transit Company." This error was corrected by an Amended Order entered February 3, 1916.

The Order as amended was as follows:

SECTION 1. Application having been made to the Public Service Commission for the First District by Manhattan Railway Company by its petition dated and verified November 17, 1913 under the provisions of the Railroad Law, for the consent of the Commission to the execution and issuance by said company of a mortgage called its "Second Mortgage and Deed of Trust" to Equitable Trust Company of New York as Trustee; and a hearing having been duly had upon said application before the Commission, Honorable George V. S. Williams, Commissioner, presiding, and Interborough Rapid Transit Company, Lessee of said Manhattan Railway Company under lease dated January 1, 1903 having at said hearing joined in the prosecution of said application, and it appearing to the Commission that the owners of capital stock of said Manhattan Railway Company to an amount equal to that required by statute have consented to the issuance of said mortgage in the manner prescribed by law,

SECTION 2. It Is ORDERED that the Public Service Commission for the First District does hereby consent to the issuance and execution by said Manhattan Railway Company of a certain mortgage described as follows:

A second Mortgage and Deed of Trust, to secure \$5,409,000 face value of bonds, made and executed by the Manhattan Railway Company to The Equitable Trust Company of New York as Trustee, dated June 1, 1913, the said bonds to be dated as of the 1st day of June, 1913, or as of the date of issue, or the last preceding interest day, and to be payable June 1, 1913, subject to redemption in whole but not in part on any interest day by payment of one hundred and five per cent. (105%) of the face value thereof besides interest accrued thereon, and said bonds to bear interest at four per cent. (4%) per annum, payable semi-annually.

The form of said mortgage submitted by said Manhattan Railway Company to the Commission is hereby approved and ordered filed and properly identified by a reference thereon to a resolution under the authority of which this order is issued. Said company, however, shall have no right or authority to issue any bonds pursuant to the terms of

said mortgage except as may be herein or hereafter authorized by the Commission.

SECTION 3. Application having been also made to the Public Service Commission for the First District by Manhattan Railway Company by its said petition under the provisions of the Public Service Commissions Law for the consent of the Commission to the issuance by said company of bonds under the said mortgage to the amount of \$4,523,000.00 face value, and Interborough Rapid Transit Company as such Lessee having joined also in the prosecution of said application, and a hearing having been duly had upon said application before the Commission, the Commissioner aforesaid presiding, and it being now the opinion of the Commission

(1) That the money to be procured by the issue of said bonds of the said Manhattan Railway Company to the amount of \$4,523,000.00 payable at a period of more than twelve (12) months after the date thereof is necessary to and reasonably required by said company for the discharge or lawful refunding of its obligations, and particularly for the purposes which are hereinafter stated in this order; and

(2) That, except as to the following specified amounts of said bonds authorized to be issued hereunder for the purposes following, to wit:

\$814,931.00 or so much thereof as may be necessary to pay the expenses of the sale of bonds hereby authorized and to make up discount,

such purposes are not in whole or in part reasonably chargeable to operating expenses or to income.

SECTION 4. IT IS ORDERED that the Public Service Commission for the First District does hereby authorize the issue by the said Manhattan Railway Company of \$4,523,000.00 face value of principal of its second mortgage bonds of said company dated as of June 1, 1913, or as of the date of issue or the last preceding interest day, due June 1, 2013, redeemable in whole but not in part on any interest day by payment of one hundred and five per cent. (105%) of the face value thereof besides accrued interest and bearing interest at four per cent. (4%) per annum, payable semi-annually, under and in pursuance of the terms of the said Second Mortgage and Deed of Trust, the issuance and execution of which is by this order consented to by the Commission.

SECTION 5. IT IS ORDERED that said issue of bonds is authorized upon the conditions following and not otherwise, to wit:

First: That the said bonds hereby authorized shall be sold by the said Manhattan Railway Company so as to net the said company not less than eighty-two per cent. (82%) of the par or face value of the principal thereof besides interest accrued thereon, and that the proceeds thereof shall be applied only to the following purposes, that is to say:

(1) To pay to Interborough Rapid Transit Company \$3,708,069. in full satisfaction and discharge of any and all moneys owing to Interborough Rapid Transit Company by Manhattan Railway Company up to and including June 30, 1913..... \$3,708,069.00

(2) For expense of sale of the bonds hereby authorized and to make up the discount or deficiency, if any, in the amount realized from the sale to net not less than eighty-two per cent. (82%)

of par of the bonds sold for the purposes specified in Subdivision 1 hereof to be applied for the purpose therein stated not exceeding the sum of.... \$ 814,931.00

\$4,523,000.00

Second: That the amount of discount and expenses sustained in the sale of the bonds hereby authorized not exceeding \$814,931.00 shall be amortized out of the income of the properties of the Manhattan Company prior to maturity of the said bonds by the establishment and maintenance of an amortization fund, and that said Manhattan Railway Company shall pay or cause to be paid into said fund out of the income of said properties in each calendar year beginning with the year 1916 an amount of money which shall not be less than one-tenth of one per cent. of the amount of said discount and expense not exceeding \$814,931.00 plus four per cent. (4%) per annum upon all prior payments into said fund until said fund shall equal the amount of said discount and expense. Said fund shall be used only for the purchase and retirement of second mortgage bonds of the said Manhattan Railway Company or for investment in securities lawful for investment of funds of savings banks in the State of New York or for other purposes approved by the Commission.

Third: That the said company shall keep separate, true and accurate accounts showing the receipt and application in detail of the proceeds of sale or disposal of the bonds hereby authorized to be issued, and on or before the tenth day of each month the company shall make verified reports to the Commission stating the sale or sales of said bonds during the previous month, the terms and conditions of sale, the moneys realized therefrom, and the use and application of said moneys, and said accounts, vouchers and records shall be open to audit and may be audited from time to time by accountants and examiners designated for such purpose by the Commission.

Fourth: That it is understood and agreed by the said Manhattan Railway Company and said Interborough Rapid Transit Company that the making of this order by the Commission authorizing the issuance of said bonds under and pursuant to the Public Service Commissions Law shall not prejudice any right of the City of New York or any right of the Interborough Rapid Transit Company upon any accounting between the said City and the said Interborough Rapid Transit Company under the terms of the Interborough Extension Certificate dated March 19, 1913 to determine the portion of the excess of net profits payable thereunder to the City of New York for any period, and that the City may contend upon any such accounting that any payments for interest or amortization of discount upon said bonds, or any portion of any such payments, ought not to be deducted from the revenue as rental under the terms of the Manhattan lease, bearing date January 1, 1903, and the Interborough Rapid Transit Company may contend that any payments for interest or amortization of discount upon said bonds, or any portion of any such payments, ought to be deducted from the revenue as rental under the terms of such lease.

Fifth: That the authority hereby given to issue such bonds hereby authorized shall apply only to bonds issued by the said company on or before the 30th day of June, 1916.

SECTION 6. IT IS ORDERED that the Public Service Commission for the First District, pursuant to the provisions of Section 54 of the Public Service Commissions Law, and to the provisions contained in a certain certificate described as follows, namely:

A certificate granted by the Public Service Commission for the First District to Manhattan Railway Company bearing date

March 19, 1913 providing for the following Railroads, viz.: Second Avenue Additional Tracks, Third Avenue Additional Tracks, and Ninth Avenue Additional Tracks

does hereby consent to the mortgage of the said certificate by including the same in the mortgage aforesaid, and such mortgage is hereby approved.

SECTION 7. IT IS ORDERED that this order take effect if and when and only when Manhattan Railway Company and Interborough Rapid Transit Company shall have notified the Commission of the acceptance by them of this order, and, except as provided in the Fifth subdivision of Section 5 limiting the duration of the authority to issue such bonds herein granted, continue in force until otherwise ordered by the Commission, and that within ten days after service upon it of a copy of this order the said Manhattan Railway Company and the said Interborough Rapid Transit Company separately notify the Commission whether the terms of this order are accepted and will be obeyed.

The further facts in the matter are set forth in the Opinion adopted.

O. C. Semple, for the Commission.

Chadbourne & Shores, by *W. A. Chadbourne*, for Manhattan Railway Co.

Richard Reid Rogers, for the Interborough Rapid Transit Co.

WILLIAMS, Commissioner: This is an application by the Manhattan Railway Company, joined in by Interborough Rapid Transit Company, asking the Commission's consent to the making by Manhattan Railway Company of a second mortgage to secure \$5,409,000 of bonds, and to the issuance under that mortgage of enough bonds to pay what is claimed to be due from Manhattan Railway Company to Interborough Company for expenditures upon the Manhattan properties for improvements and additions between October 30, 1907 and June 30, 1913 amounting, as settled by a contract dated October 22, 1913, to \$3,708,069.

The accountants and engineers of the Commission have been given a statement (Exhibit 15) of these expenditures from October 30, 1907 to June 30, 1913 amounting to \$5,259,337.65 against which there have been payments on account of \$1,279,526.09. The engineers have recommended deductions amounting to \$253,803.54 growing out of revisions of the figures charged and from increases in amounts representing withdrawals of property and from fixed capital during the same period, making the net figure for the period approved \$3,726,008.02 (Exhibit 19). The company asks only

\$3,708,069, the amount agreed upon in the settlement contract above referred to.

The Manhattan Railway Company, by lease dated January 1, 1903, taking effect April 1, 1903, leased its elevated roads to the Interborough Company for nine hundred and ninety-nine years, dating from November 1, 1875, at a rental of \$10,000 a year, and the keeping of certain covenants specified, among which covenants were that the lessee should pay as rent annual dividends on the stock of the Manhattan Company of at least six per cent. until January 1, 1906, and after that seven per cent., payable quarterly; also the interest on bonds of the Manhattan Company issued or that might be issued;

This application for bonds is one made not by the Interborough Company, but by the Manhattan Company, in order to obtain bonds authorized under said lease between the Manhattan Company and the Interborough Company for the purpose of refunding to the Interborough Company capital expenditures made upon its property. Article Fourth of the lease reads, as follows:

"The Lessor further covenants and agrees that it will on or after the first day of July, 1908, at the request of the Lessee, issue at the highest price obtainable therefor, a new series of bonds bearing four per centum interest per annum, payable semi-annually, to the amount of principal of \$5,409,000, secured by a mortgage covering, if deemed advisable by the Lessee, either a portion or the whole of its franchises, rights, privileges, and property, and it is agreed that the proceeds of the sale of such bonds shall be applied to the purposes set forth in Article Second hereof."

It will thus be seen that there was a contract entered into between the Interborough and the Manhattan Company long before the Public Service Commission Law was enacted by the Legislature, whereby the Manhattan Company agreed to issue bonds for the purpose of enabling the Interborough Company to pay for the expenditures, proofs of which were established on the hearing,

The uses to which the moneys received from Bond sales could be applied were set forth in Article 2, and it is undisputed that the betterments and expenditures found were such as were authorized by this article.

Counsel for the Commission has contended that the debt to be

refunded should be reduced by \$718,832.32 for taxes charged by the Manhattan Company to its surplus account and \$131,242.61 discount on Bonds charged in the same manner. He points out in the lease a clause which he claims would throw upon the Interborough Company the burden of paying these taxes which accrued long before the lease was made and was then the subject of litigation.

I think, taking the lease as a whole into consideration, and the fact that the Manhattan Company set aside in a special fund moneys to pay these franchise taxes, which fund (by the reading Section 2) it evidently thought would be in excess of the amount that would eventually have to be paid, that it is clear that the obligation to pay these disputed taxes rested upon the Manhattan Company.

It is not reasonable to presume that the Manhattan Company would assume to pay the tax in dispute and leave the interest and penalties to be paid by the Interborough Company. The Manhattan Company has not so construed the lease. Indeed, that company has already charged the amount against its distributable surplus. The same is true of the item for discount on the bonds issued.

I think, therefore, that these amounts should not be deducted from the amount found to have been expended by the Interborough Company. The right of the Interborough Company to receive the proceeds of the bonds is not based upon anything contained in the contract of settlement of March 15, 1913, nor does that contract create any new obligation on the part of the Manhattan Company. By it the parties only agree to forthwith settle and adjust the account or to arbitrate their obligations under the provisions of the lease within sixty days from the date of the contract. The actual obligation to issue bonds and pay for the Interborough expenditures upon the Manhattan property dated from the lease, and this later instrument is only valuable as evidence of a settlement to that date, and as an interpretation of the lease as far as the matters then in dispute were concerned.

Counsel of the Commission advocates a denial of the application in so far as it relates to expenditures prior to June 30, 1911, and bases his argument upon the following facts:

On March 19, 1913 the Dual System Contracts were entered into between The City of New York and the Interborough Rapid Transit Company providing for extensions of the elevated railroads and in connection therewith and as part of the same transaction a certificate was granted by the Commission to the Manhattan Com-

pany providing for rights to third or additional tracks on certain of its lines. Under this Interborough Extension Certificate, Article XII, the City of New York and the Interborough Rapid Transit Company are to divide equally the excess of net profits over the average of the annual net profits of the Manhattan Railroad for the two years ending June 30, 1910 and June 30, 1911. To find out this excess of net profits the Interborough is allowed by the certificate to deduct from revenue of the elevated lines, among other things, taxes, operating expenses, rent under the Manhattan lease and the sum of \$1,589,348 representing the average net profits of the existing Manhattan Railroad for the years ending June 30, 1910 and June 30, 1911.

Interest on these second mortgage bonds, if allowed by the Commission, will be deducted from the revenue as being rent under the Manhattan lease (Article Seventh). The contract between the Manhattan Company and the Interborough Company bearing date March 15, 1913, on page 5, provides as follows:

"The interest and any amortization payments required to be made upon said bonds by reason of the sale thereof at a discount, shall be paid by the Interborough Company as a part of the rental under the lease."

The result, therefore, of allowing these bonds as requested for expenditures made in a period from October, 1907 to June 30, 1913 will be that as to expenditures made by the Interborough Company prior to June 30, 1911 the company will deduct from the revenue the preferential of \$1,589,348 as net profits covering of course its return on such expenditures, and will also deduct four per cent. interest on the bonds issued now to pay for the same expenditures, and in addition to this, as these are four per cent. bonds and will necessarily be sold at a discount, the Interborough Company will have a right to deduct from the revenue under the clause just quoted the annual amortization payments necessary to make up this discount.

I do not think that the Commission can refuse to approve the issuance of these bonds on the theory advanced by counsel for the Commission. I think the question is, rather whether the interest and sinking fund charges upon these bonds should be deducted as a part of the rental payable by the Interborough Company under the extension certificate, or whether it should be paid by the Inter-

borough Company out of the preferential, and that that is a question which can properly be decided only in an accounting between the City of New York and the Interborough Company under that certificate. If the City desires to raise the objection that the interest upon these bonds should not be treated as a part of the rental, it can do so at that time, when both sides will have had an opportunity to fully present the case. However, on the oral argument it was suggested that it was not desirable that either party should be committed by anything done in the present application on this question, and the offer was made on behalf of the applicant and consented to by the Interborough Company that the order authorizing the issue of bonds should be without prejudice to the right of the City or the Interborough Company, upon an accounting between the City and the Interborough under the extension certificate, to determine whether these bonds were or were not a proper rental charge deductible from the pooled earnings under the extension certificate.

Dated, January 25, 1916.

(STRAUS, *Chairman*, HODGE and HAYWARD, *Commissioners*, concurring; CRAM, *Commissioner*, absent.)

In the Matter of the Application of THE LONG ISLAND RAILROAD COMPANY, under Sections 89 and 98 of the Railroad Law, for a Determination as to the Manner in which the Proposed Branch of its Railroad Extending from Creedmoor to a Point West of Lawrence Street, Flushing, shall Cross Springfield Boulevard (Rocky Hill Road), Black Stump Road, Queens Road, North Hempstead Turnpike, Lawrence Road, Fresh Meadow Road, Underhill Avenue (Jamaica Avenue), Jagger Avenue (Remsen Road), Hammell Avenue (Hillside Drive) and Lawrence Street, all in the Third Ward of the Borough of Queens, City of New York, and the Railroad of the New York & Queens County Railway Company.

CASE No. 2023

Grade Crossing Elimination—Extension of Railroad—Plan of L. I. R. R. Co. for Creedmor-Flushing Branch Approved.—The applicant's

plan for the proposed construction of the Creedmoor-Flushing Branch providing for the elimination of grade crossings at all intersections of the streets and tracks of the N. Y. & Q. C. Ry. Co. except at Jagger Avenue (Remsen Road) as described in Exhibit No. 4 in this proceeding is approved.

Grade Crossing Elimination—Extension of Railroad—Compliance with City's Street Plan not Required on Account of Excessive Cost.—Where in the construction of an extension of a railroad in a sparsely settled territory the execution of street crossings in compliance with the City's scheme of future street construction in the easiest manner and at a minimum cost would add to the cost of the extension so as to make it prohibitive and likely to cause the construction of the extension be abandoned, HELD,—that compliance with the City's plan will not be required.

Hearings closed January 24, 1916. Opinion of Commissioners Cram and Hodge adopted January 31, 1916.

Upon the application of The Long Island Railroad Company the Commission adopted a Resolution on October 8, 1915, directing a hearing under sections 89 and 98 of the Railroad Law as to the manner of crossing the intersecting streets and tracks of the New York & Queens County Railway Company by the proposed Creedmoor-Flushing Branch of the applicant's railroad.

On January 31, 1916, pursuant to the Opinion of Commissioners Cram and Hodge adopted on that day, the Commission entered an Order, as follows:

An application having been made to the Commission by The Long Island Railroad Company pursuant to the provisions of Sections 89 and 98 of the Railroad Law by petition dated and verified September 27, 1915 asking for a determination as to the manner in which the proposed Creedmoor-Flushing Branch of The Long Island Railroad Company should cross the streets, avenues, highways and roads of the street surface electric railroad above named and a hearing having been had on October 19, 1915, October 28, 1915 and November 12, 1915 upon said application before Hon. J. Sergeant Cram, Commissioner, William J. Clark, Assistant Counsel, appearing for The City of New York, Joseph F. Keany and Alfred A. Gardner, appearing for The Long Island Railroad Company, Leslie H. Groser, appearing for C. W. Ward, Trustee and for Cottage Gardens Company of Queens, Long Island, James Eadie, appearing for Flushing Association, W. T. Yale, appearing for Queens Chamber of Commerce and the following property owners appearing in person: Lyttleton Fox, J. W. Paris, Charles Wheeler, Joseph Donoghue, Walter J. Willis, I. Swann Brown, William H. Fitzpatrick and M. S. Hogan, and testimony having been taken and public notice of such hearing having been given in at least two newspapers published in the locality, and the Commission having determined that it is impracticable to carry said proposed branch railroad over or under Jagger Avenue (Remsen Road),

**NOW THEREFORE IT IS
ORDERED AND DETERMINED**

(1) That the proposed Creedmoor-Flushing Branch of The Long Island Railroad Company, when constructed, shall be so constructed as to avoid grade crossings at each of the streets named above except in the case of Jagger Avenue (Remsen Road) which shall be crossed at grade.

(2) That said proposed railroad shall be constructed to pass under Springfield Boulevard (Rocky Hill Road); at Black Stump Road the railroad shall pass over the street; at Queens Road the railroad shall pass under the street; at North Hempstead Turnpike the railroad shall pass over the street; at Lawrence Road, the railroad shall pass under the street; at Fresh Meadow Road the railroad shall pass under the street; at Underhill Avenue (Jamaica Avenue) the railroad shall pass over the street; at Hammell Avenue (Hillside Drive) the railroad shall pass under the street; at Lawrence Street, the railroad shall pass under the street.

(3) That said branch railroad shall pass over the tracks of the New York and Queens County Railway Company at a point about 2980 feet east of Underhill Avenue (Jamaica Avenue) and about 2505 feet west of Fresh Pond Road giving a fifteen foot clearance above such tracks.

FURTHER ORDERED AND DETERMINED that the work of passing over or under or across said streets and railroad shall be as shown on a certain map received in evidence in this proceeding on October 28, 1915 and marked Exhibit 4 and entitled "The Long Island Railroad Company Creedmoor-Flushing Branch."

FURTHER ORDERED AND DETERMINED that in case of the railroad passing over a street a clearance shall be allowed between the highest point of the street and the lowest part of the railroad bridge of not less than 14 feet, and that where the railroad is carried under streets a clearance shall be allowed from the top of the rail to the lowest member of the street bridge of not less than 16½ feet.

FURTHER ORDERED AND DETERMINED that all details of construction be submitted to the Public Service Commission for the First District for its approval.

FURTHER ORDERED AND DETERMINED that nothing contained in this order shall be construed as requiring the City of New York or the State of New York to bear any part of the cost of the necessary construction.

Arthur DuBois, for the Commission.

Alfred A. Gardner, Joseph F. Keeney and L. J. Carruthers,
for The Long Island Railroad Co.

James L. Quackenbush, by *Arthur G. Peacock*, for the New
York & Queens County Railway Co.

William J. Clarke, for the City of New York.

Harry P. Nichols, for the Bureau of Franchises of the Board
of Estimate and Apportionment of The City of New
York.

Nelson P. Lewis, Chief Engineer of the Board of Estimate
and Apportionment of The City of New York.

Leslie H. Groser, for C. W. Ward, trustee, and Cottage
Gardens Co., Queens, L. I.

Littleton Fox, for J. A. Wigmore Land Co.

James S. Eadie, for Flushing Association.

Property Owners, in person.

CRAM, Commissioner: This is an application by The Long Island Railroad Company for a determination by the Commission under Section 89 of the Railroad Law as to how the proposed Creedmoor-Flushing Branch of The Long Island Railroad Company should cross the streets above named. Three plans were considered at the hearing, one submitted by The Long Island Railroad Company (Exhibit No. 4) which called for comparatively inexpensive construction although it avoided grade crossings except at one street, Jagger Avenue (Remsen Road). The City of New York suggests a treatment of crossings which requires quite different grades for the railroad. The purpose of this was to allow new streets to be laid in the future at a minimum expense and with the least possible disturbance of natural street grades. The estimated additional cost of adopting the City's plan, or an alternative plan submitted as a suggestion by the engineers of the Commission, according to Mr. Morris, the engineer of The Long Island Railroad Company (Minutes of testimony of November 12, 1915, p. 83), is \$600,000 or more. As this part of Long Island is but little built up I am of the opinion that the possible interference with the City's street plan for this section is not sufficiently serious to call for the great additional expenditure which might result in the entire project being abandoned. I therefore recommend the adoption of the order submitted herewith which calls for the railroad construction in the manner described in Exhibit No. 4, which is a plan recommended by the engineers of The Long Island Railroad Company.

HODGE, Commissioner: The Long Island Railroad proposed to build about two and a half miles of new road crossing all present highways either above or below grade, except one narrow unimportant highway known as Jagger Avenue (Remsen Road); the greater portion of this road to be approximately at the present level of the ground.

The Engineer of the Board of Estimate and Apportionment states that all of this area, which is now farm lands, has been tentatively laid out with city streets, but that these streets have not been finally located. His suggestion is that the general elevation of this road be raised about twenty feet for two-thirds of its length, so that in future when and if streets are laid out they can be carried under this road. The cost of the road as submitted by the Railroad Company is given at Two hundred and thirty-one thousand Dollars; and

it is stated that raising it to the elevation suggested by the Engineer of the Board of Estimate and Apportionment would increase this cost Six hundred thousand Dollars, making a total of Eight hundred and thirty-one thousand Dollars.

In my opinion this would practically prohibit the building of this road. As there will be no need for streets in this locality unless the residents have transit facilities, it would seem advisable to procure this means of transit, especially in view of the fact that the Railroad Company pays the entire cost and none of it falls on the City; and if this and other means of transit bring a sufficient population to require the streets to be laid out, the traffic will probably then be heavy enough to warrant the changing of the road so as to avoid grade crossings. Such change can be compelled at any time.

I would, therefore, recommend that the Order be adopted by the Commission, as per copies attached hereto.

(STRAUS, *Chairman*, WILLIAMS and HAYWARD, *Commissioners*, concurring.)

In the Matter of the Petition of the MANHATTAN RAILWAY COMPANY for Leave to Issue Bonds to the Face Amount of \$1,000,000 Pursuant to the Terms and Provisions of its Consolidated Mortgage dated February 26, 1890, for the Purpose of Refunding a Like Amount of Debenture Bonds of the New York Elevated Railroad Company.

CASE No. 2059

Bond Issue—Rapid Transit Corporations—Liability on Bonds Issued before Merger.—Bonds issued by the N. Y. E. R. R. Co. before merger with the applicant, M. Ry. Co., are a liability of the latter.

Bond Issue—Rapid Transit Corporations—Redemption of Bonds Issued for Capital Purposes.—Where, upon the maturity of debenture bonds issued for capital purposes, the earnings and property of the corporation liable to discharge the same are such as not to make them chargeable to operating expenses or to income, a new bond issue will be authorized to pay off said debentures.

* **Bond Issue—Rapid Transit Corporations—Redemption of Debenture Bonds—Issue of Bonds for \$1,000,000 Authorized.**—The applicant, M. Ry. Co., is authorized to issue \$1,000,000 four (4) per cent bonds reserved under a consolidated mortgage dated February 6, 1890, to discharge 30-year five (5) per cent debenture bonds for the same amount

issued March 1, 1886, by the N. Y. E. R. R. Co., which was thereafter merged with the applicant corporation.

Hearings closed February 7, 1916. Opinion adopted February 28, 1916.

This proceeding was upon the application of the Manhattan Railway Company and was commenced by a Resolution adopted by the Commission on January 31, 1916, directing a hearing in the matter.

On February 28, 1916, pursuant to an Opinion of Counsel adopted on that day, the Commission entered the following Order granting the application.

Section 1. Application having been made to the Public Service Commission for the First District by Manhattan Railway Company by its petition dated January 26, 1916 under the provisions of the Public Service Commissions Law for the consent of the Commission to the issuance by said company of bonds under its consolidated mortgage bearing date February 26, 1890 to the amount of \$1,000,000 face value, and a hearing having been duly had upon said application before the Commission, Hon. William Hayward, Commissioner, presiding, and it being now the opinion of the Commission:

(1) That the money to be procured by the issue of said bonds of the said Manhattan Railway Company to the amount of \$1,000,000 face value, payable at a period of more than twelve months after the date thereof, is necessary to and reasonably required by said company for the discharge or lawful refunding of its obligations, and particularly for the purposes which are hereinafter stated in this order; and

(2) That such purposes are not in whole or in part reasonably chargeable to operating expenses or to income.

Section 2. It Is ORDERED that the Public Service Commission for the First District does hereby authorize the issue by the said Manhattan Railway Company of \$1,000,000 face value of principal of the consolidated mortgage bonds of said company dated as of February 26, 1890, due April 1, 1990, bearing interest at four per cent. per annum, payable half yearly October 1st and April 1st, under and in pursuance of the terms of the consolidated mortgage of said company dated February 26, 1890 to Central Trust Company of New York, as Trustee.

Section 3. It Is ORDERED that said issue of bonds is authorized upon the conditions following and not otherwise, to wit:

First: That the said bonds hereby authorized shall be sold by the said Manhattan Railway Company so as to net the said company not less than par or the face value of the principal thereof besides the interest accrued thereon from the last interest day to the date of issue, and that the proceeds thereof shall be applied only to the following purposes, that is to say:

To pay or discharge debenture bonds of the New York Elevated Railroad Company to the face amount of \$1,000,000, dated March 1, 1886, due and payable March 1, 1916, for the payment of which at the face value

thereof the said Manhattan Railway Company is liable. \$1,000,000

Second: That the said Manhattan Railway Company shall keep separate, true and accurate accounts showing the receipt and application in detail of the proceeds of sale or disposal of the bonds hereby authorized to be issued, and on or about the tenth day of each month the company shall make verified reports to the Commission stating the

sale or sales of said bonds during the previous month, the terms and conditions of sale, the moneys realized therefrom, and the use and application of said moneys, and said accounts, vouchers and records shall be open to audit and may be audited from time to time by accountants and examiners designated for such purpose by the Commission.

THIRD: That the authority hereby given to issue such bonds hereby authorized shall apply only to bonds issued by the said company on or before the 30th day of June, 1916.

Section 4. It Is ORDERED that this order take effect on the 28th day of February, 1916, and, except as provided in the Third subdivision of Section 3 limiting the duration of the authority to issue such bonds herein granted, continue in force until otherwise ordered by the Commission, and that within ten days after service upon it of a copy of this order the said Manhattan Railway Company notify the Commission whether the terms of this order are accepted and will be obeyed.

The further facts in this matter are set forth in the Opinion adopted.

Oliver C. Semple, for the Commission.

Murray, Prentice & Howland, by G. W. Murray, for Manhattan Railway Company.

By THE COMMISSION—This is an application by Manhattan Railway Company for an order authorizing said company to make a further issue of \$1,000,000 face value of four per cent. bonds under its consolidated mortgage dated February 26, 1890 to discharge and pay \$1,000,000 face value of five per cent. debenture bonds of the New York Elevated Railroad Company dated March 1, 1886, due March 1, 1916, guaranteed by Manhattan Railway Company, and which the proof shows were issued by the New York Elevated Railroad Company to pay for capital expenditures upon the property of that company made by the Manhattan Railway Company prior to March 1, 1886.

The corporate history of these two corporations is given in some detail in the opinion in Case No. 572 before the Commission, reported in Volume I, P. S. C. Reports, First District, page 205, and need not be here repeated further than to say that the New York Elevated Railroad Company was organized in October, 1871 under the Railroad Act of 1850 and succeeded in December, 1871 through foreclosure of mortgage to the rights and properties of the West Side and Yonkers Patent Railway Company, organized June 25, 1866 under Chapter 697 of the Laws of 1866 and other acts, and that the routes of the company were substantially the routes of the present Ninth Avenue and Third Avenue Lines of the Manhattan

Railway Company; that the Manhattan Railway Company was organized December 29, 1875 under the Rapid Transit Act of that year, Chapter 606, and thereafter through lease and surrender of stock of the New York Elevated Railroad Company the latter company was in 1890 merged into the Manhattan Railway Company.

The Manhattan Railway Company is liable to pay the \$1,000,000 debenture bonds of the New York Elevated Railroad Company maturing March 1, 1916, and the consolidated mortgage bearing date February 26, 1890 of the Manhattan Railway Company by its terms has reserved \$1,000,000 face value of the bonds thereby provided for to take up by exchange or otherwise these outstanding debenture bonds of the New York Elevated Railroad Company. The bonds for which this application is made are to be taken in cash at par and accrued interest by the Interborough Rapid Transit Company.

Under the circumstances the Commission can state that the consolidated mortgage bonds desired are reasonably required to discharge the said debentures. It appears, moreover, that these debenture bonds were issued for capital purposes and that the property and earnings of the Manhattan Railway Company properties are such that at present the Commission can also state that the purpose of the issue is not reasonably chargeable to operating expenses or to income.

An order should therefore be issued granting the application of the Manhattan Railway Company for the further issue of \$1,000,000 face value of its consolidated mortgage four per cent. bonds to discharge the \$1,000,000 five per cent debenture bonds of the New York Elevated Railroad Company due March 1, 1916.

(STRAUS, *Chairman*, CRAM, HODGE and HAYWARD, *Commissioners*, concurring.)

In the Matter of Filing with the Public Service Commission for the
First District Rates and Schedules by STEAM CORPORATIONS.

CASE No. 1890

Jurisdiction of Commission—Steam Corporations—Steam Company Supplying Tenants and One Other Customer Only not a Public Service Corporation.—A steam corporation which supplies steam to its tenants and to one other consumer across the street but does not offer to supply steam to any other customers and has no transmission mains so to do is not a public service corporation.

Jurisdiction of Commission—Steam Corporations—Company Without Franchise Grant not Subject to Commission Regulation.—The operation of pipes for the transmission of steam through a tunnel extending across a public street is not operative, in the absence of a franchise grant for said tunnel, to subject a steam company to the jurisdiction of the Commission under Section 80 of the P. S. C. L.

Opinion adopted April 6, 1916.

On November 24, 1914, the Commission entered an Order directing all steam companies under its jurisdiction to file their rate schedules. A copy of the Order was served upon the Reliable Steam Power Company, which, it later appeared, furnished steam power for manufacturing purposes to its tenants at 250-252 Plymouth Street, Brooklyn, and to one other customer across the street. The company replied to the Commission's Order that it published no tariff schedules. On April 6, 1916, the Commission adopted an Opinion of Counsel, set out below, as its own Opinion that the Reliable Steam Power Company was not subject to the jurisdiction of the Commission and should not be required to comply with its Order affecting steam companies.

By THE COMMISSION:—The question is presented whether the Reliable Steam Power Company is doing a business which is subject to the jurisdiction of the Commission, including the filing of rates and schedules.

The Reliable Steam Power Company was incorporated in 1886 under the Act of February 17, 1848 (laws 1848, chap. 40) authorizing the formation of corporations for manufacturing, mining, mechanical or chemical purposes and the objects for which it was formed were stated in the certificate of incorporation as follows:

The purchase, holding and possessing of real and personal property, for use in manufacturing business and renting to tenants. And the generating and selling of steam, steam

power, electricity, electrical power, and other power, for driving machinery, heating, lighting, and other purposes.

No intention is disclosed in the certificate to lay pipes, ducts or conduits in the public streets or highways nor was there any authority to do so granted in the Act of February 17, 1848 under which the company was incorporated. By chapter 317 of the Laws of 1879 however such authority was given to corporations formed under the Act of 1848, but this authority was dependent upon acquiring the consent of the proper municipal authorities. The said Act of 1879 reads in part as follows:

Any corporation or association formed or organized under the act entitled "An act to authorize the formation of corporations for manufacturing, mining, mechanical, or chemical purposes", passed February seventeenth, eighteen hundred and forty-eight, or under any of the amendments to said act, * * * shall have full power to manufacture, furnish, and sell such quantities of hot water, hot air, or steam as may be required in the city, town, or village where the same shall be located; and such corporation shall have power to lay pipes or conductors for conducting hot water, hot air, or steam through the streets, avenues, lanes, alleys, squares, and highways in such city, village, or town, with the consent of the municipal authorities of said city, town, or village, and under such reasonable regulations and conditions as they may prescribe; * * *

This Act seems to be an existing statute as it was never repealed or embodied in the Consolidated Laws.

The Reliable Steam Power Company is the owner of loft buildings known as numbers 240 to 252 Plymouth Street and numbers 257 to 265 Water Street in the Borough of Brooklyn. The buildings on Water Street are immediately in the rear of those fronting on Plymouth Street. The said buildings are rented to different tenants by the Reliable Steam Power Company for manufacturing purposes. In the rear of number 250 Plymouth Street the company maintains a steam plant and there generates steam power for distribution through its property to the tenants. Besides its tenants the only other party to which the Reliable Steam Power Company supplies steam power is the Ingersoll Paint Works which is situated on the

opposite side of Plymouth Street and occupies the building or buildings known as numbers 241 to 245 Plymouth Street. The steam supplied the Ingersoll Paint Works is transmitted in pipes running through a tunnel constructed underneath and across Plymouth Street.

By chapter 505, laws of 1913, Article 4-A was added to the Public Service Commissions Law conferring upon the Commission certain powers in respect to steam corporations. Under Section 5 of the Public Service Commissions Law the jurisdiction of the Commission extends

h. To the manufacture, holding, distribution, transmission, sale or furnishing of steam for heat or power in the first district, to steam plants therein and to the persons or corporations owning, leasing or operating the same.

This language is in very broad and general terms and is of course subject to the limitations contained in the definition of "steam corporation" given in Section 2, Subdivision 22:

The term "steam corporation", when used in this chapter, includes every corporation, company, association, joint-stock association, partnership and person, their lessees, trustees or receivers appointed by any court whatsoever owning, operating or managing any steam plant, except where steam is made or produced by the maker, on or through private property solely for the maker's own use or the use of the maker's tenant and not for sale to others.

It will be noted that the definition excludes a corporation which produces steam and distributes it on or through private property solely for its own use or for its tenants. It therefore remains to be considered whether the distribution of steam to the Ingersoll Paint Works brings the company within the jurisdiction of the Commission and what, if any, effect the Act of 1879 had in respect of the jurisdiction of the Commission.

The tunnel across Plymouth Street through which the steam is distributed to the Ingersoll Paint Works has been in existence for over 50 years according to the officials of the company. From this it appears that the tunnel was constructed at least 20 years before the company was incorporated. Plymouth Street at this point was legally opened in 1844. Under the supervision of Mr. Monroe of

the Franchise Bureau an examination has been made of the proceedings of the Common Council and the Highway Department of the old City of Brooklyn as far back as those records go and there is no mention of any franchise or other municipal authority or consent having been granted to anyone for the construction of this tunnel across Plymouth Street. The Bureau of Franchises of the Board of Estimate has also been consulted and reports no knowledge of any municipal authority for the construction and maintenance of the tunnel. The President of the Reliable Steam Power Company, Mr. William H. Cary, a man over 70 years of age, stated to a representative of the Commission that he has been identified with the property in question all his life, having acquired his interest from his father, and that he has no knowledge of any franchise in respect to the said tunnel. His recollection is that the tunnel was built during his father's lifetime in order to serve and accommodate a friend and neighborly manufacturer. Pertinent here is the language of the Wisconsin Court referred to by the Wisconsin Railroad Commission in an opinion reported in the Public Utility Reports (P. U. R. 1915 A) at page 660.

In the Cawker Case, 147 Wis. 320, 37 L. R. A. (N. S.) 510, 133 N. W. 157, where it was sought to bring under the jurisdiction of the Railroad Commission the executors of the Cawker estate, who were operating a lighting plant for the benefit of the tenants of a building owned by the estate, from which they supplied the surplus current to two or three adjoining buildings, in the opinion holding that the executors were not operating a utility, the court said: "It was not the furnishing of heat, light, or power to tenants, or incidentally to a few neighbors, that the legislature sought to regulate, but the furnishing of those commodities to the public; that is, to whoever might require the same. * * * The use to which the plant, equipment, or some portion thereof is put must be for the public in order to constitute it a public utility. But whether or not the use is for the public does not necessarily depend upon the number of consumers; for there may be only one, and yet the use be for the public,—as where a plant is built and operated for furnishing power to the public generally, but for a time finds one consumer who uses it all."

The amount of steam supplied the Ingersoll Company Works is but a small part of that generated, and outside of its own tenants the Ingersoll Paint Works is and has been for a great many years the only other consumer of steam produced by the Reliable Steam Power Company. There has been no act on the part of the company to serve the public, so it is difficult therefore to understand how it can be classed as a public service corporation. No opinion is expressed as to whether there was any legal right to construct the said tunnel.

Now as to the Act of 1879. Under that Act as already stated the Reliable Steam Power Company was authorized to lay down pipes in the city streets upon acquiring the consent of the municipal authorities.

Section 80 of the Public Service Commissions Law enumerates the general powers of the Commission in respect to steam heating and Section 1 thereof reads as follows:

General powers of commissions in respect to steam heat. Each commission shall within its jurisdiction: (1) have general supervision of all steam corporations having authority under any general or special law or under any charter or franchise to lay down, regulate or maintain pipes, conduits, ducts or other fixtures in, over or under the streets, highways and public places of any municipality, for the purpose of furnishing or transmitting steam for heat or power, and all plants leased or operated by any such corporation.

It is clear therefore that under the Act of 1879 the Reliable Steam Power Company was empowered to become a public service corporation and thus come within the jurisdiction of the Commission. It appears, however, that the company never exercised such right. The Franchise Bureau states that no record can be found showing that either the old City of Brooklyn or the Greater City of New York ever granted a franchise or consent to the company to lay pipes in the city streets. The only pipes now in the street are those in the tunnel already mentioned connecting the steam plant with the Ingersoll Paint Works on the opposite side of Plymouth Street. No longitudinal pipes are laid and without them it is difficult to understand how further distribution of steam could be made. Aside from the tenants the Ingersoll Paint Works is and has been the only consumer of steam generated by the company. It is not un-

reasonable to suppose that the object of the company in maintaining its steam plant is to hold it as an inducement and attraction to its tenants. Apparently there has been no intent or desire on the part of the company to serve the public with steam. And, as Mr. Wyman says, in his book on public service corporations, Section 201 :

There is no complete case of public employment made out when the business is public in character if there has been in the particular case no profession to serve the public. * * * That is, the rule is fundamental that in any case of public employment the evidence of profession to serve the public and the proof that the business is public in character must both be sufficient to carry conviction.

It seems to me that until it applies for and acquires a franchise or the consent of municipal authorities to lay pipes in the city streets the Act of 1879 by itself does not make the Reliable Steam Power Company a public service corporation.

Under these facts the Reliable Steam Power Company is not doing a business subject to the jurisdiction of the Commission and no action should be taken to compel it to file rates and schedules.

(STRAUS, *Chairman*, HAYWARD, HODGE and WHITNEY, *Commissioners*, concurring; HERVEY, *Commissioner*, absent.)

In the Matter of the Hearing on Complaint of C. E. REED against the NEW YORK CONSOLIDATED RAILROAD COMPANY to Determine Whether an Order Should be Made Requiring said Company to Improve its Service between Cypress Hills and Chambers Street.

CASE No. 2074

Service—Rapid Transit Railroads—Congestion at Chambers Street Station of N. Y. C. R. R. Co.—Improvements Recommended.—To reduce the congestion of passengers at the Chambers Street station of the N. Y. C. R. R. Co. it is recommended (1) that two stairways be removed at the southerly end of said station; (2) that additional platform men and special officers be stationed thereat to direct the movement of passengers; (3) that the car equipment of the respondent be increased by the leasing of fifty trailer cars of The L. I. R. R. Co. for elevated trailer purposes, and (4) that employes of the respondent be instructed in respect to announcement of stations and destination of trains.

Hearings closed April 3, 1916. Opinion adopted April 6, 1916.

This proceeding was upon the complaint of C. E. Reed against the service of the New York Consolidated Railroad Company between Cypress Hills and Chambers Street, and was started by a Resolution for a hearing adopted on March 16, 1916. Hearings were held in the matter on March 20, and April 3, 1916, whereupon Commissioner Whitney filed an Opinion on April 6, 1916, recommending certain improvements.

In filing his Opinion Commissioner Whitney made the following statement:

"I desire to file a memorandum with respect to suggestions as to the improvement of the service and physical conditions in the Chambers Street Station. I think it would be better not to adopt any final order at this time, but merely file something in the nature of an opinion that carries suggestions as to what should be done. One of these suggestions is that at the Chambers Street station, the second and third stairways from the south end be removed on the west loading platform, and to carry that I move that the Chief Engineer of the Commission be directed to have that done at once."

The motion was thereupon adopted.

Arthur DuBois, for the Commission.

D. A. Marsh, for the New York Consolidated Railroad Co.

C. E. Reed, the complainant in person.

George A. Deitz, for the Home State Civic Assn.

Cornelius M. Sheehan, for the Allied Board of Trade.

Paul Ajax, for Ridgewood Board of Trade.

H. B. Salisbury, for Workingmens Cooperative Assn.

Charles H. Schrader, for West End Citizens League of Woodhaven.

Jonathan Waterbury, for Homestead Civic Assn.

Tyler E. Smith, in person.

WHITNEY, Commissioner: In this matter two hearings have been held, at which evidence was presented showing that extreme congestion was present at the Chambers Street station, requiring immediate relief. In addition Commissioner Hervey and myself made personal observation of the service at the terminal. This congestion arises in part from the blocking of the loading platform by the presence of a large number of stairways which, in connection

with the columns supporting the Municipal Building, create such narrow passageways as to prevent the free passage of passengers the length of the platform.

A number of suggestions were made with respect to a remedy of this condition. After a careful consideration of these, it is deemed wise that physical changes should be made in order to allow the freer passage of passengers.

Of the seven stairways to the loading platform the most southerly one is used by about fifty per cent of the passengers using this station. Commissioner Hodge has given careful attention to the engineering plans submitted and recommends the removal of the second and third stairways from the southerly end. It is recommended that the Chief Engineer be directed to have this work done immediately. The estimated cost is about \$1,000. In the meantime it is recommended that the company add special officers and increase the number of platform men to handle the crowds satisfactorily, to be continued as long as the present congestion at this station persists. It is also recommended that the present practice be stopped during rush hours of allowing passengers to dismount from trains on the unloading platform, and enter trains from this platform. Special officers and platform men should see that such persons cross over to the loading platforms.

The evidence presented indicated that the schedule of trains from Cypress Hills furnishes a fairly adequate service for persons transferring to trains at Cypress Hills. Passengers from succeeding stations, however, so crowd these trains that slow movement results, with the consequent delay in the schedule to such an extent that trains cannot keep up with the schedule, and thus result in a practical reduction of service from Cypress Hills during the rush hour. This condition, in a large part, is due to failure to operate sufficient trains which, in turn, results from lack of sufficient equipment on the part of the operating company.

It is realized that when additional rapid transit lines, under Contract No. 4 are placed in operation, making use of the new equipment purchased and available for this service, that sufficient of the existing elevated equipment will be released to allow for more adequate service on elevated lines, such as those over the Williamsburg Bridge.

The Commission has given a great deal of attention to the matter of early operation of the New Utrecht Avenue elevated. Conditions appear hopeful that operation may be possible through the

Fourth Avenue subway and the 38th Street Cut, over the New Utrecht Avenue elevated to the 62nd Street station, and a single track operation from that point to the 18th Avenue station, by the end of May, with double track operation to the 18th Avenue station within a short time thereafter. It will be extended further south as stations can be made available. This service, making use of new equipment, will release upwards of fifty cars now in use on the West End line and therefore available for use elsewhere on the Fulton Street lines and particularly on the Williamsburg Bridge lines. Consequently, it would appear that no substantial relief can be obtained in the way of increased trains by the use of existing equipment until that time.

Inquiry has developed, however, that the Long Island Railroad has fifty-two cars suitable for elevated trailer purposes which can readily be leased and put in use immediately. This has already been called to the attention of the operating company, with the suggestion that such cars be leased and made use of at once, and until, by the use of new equipment, sufficient existing equipment will be available. It is accordingly recommended that the operating company be urged to avail itself of this Long Island Railroad equipment immediately.

It is also recommended that the operating company give particular attention to instructions to its employees in respect to announcement of stations and of information necessary to boarding passengers with respect to the destination of trains. Considerable confusion has arisen from lack of such adequate information.

No order is proposed for adoption at this time, for the reason that the officials of the operating company expressed, at the hearings, the willingness of the company to avail itself of every means of increasing its service and accommodations.

It is recommended that inspectors of the Commission continue a close observation of the service and report such additional improvements as they deem advisable.

In the Matter of the Hearing Before Both Commissions as to the Regulations, Practices and Service of THE LONG ISLAND RAILROAD COMPANY with respect to Train Crews on All Trains Operated by Electricity as a Motive Power in the Transportation of Passengers.

CASE NO. 2016

Safety Precautions—Electrically Operated Railroads—Closing Gates and Trap Doors before Starting Trains—Non-Compliance with Commission Order.—It appeared that because of the failure of the L. I. R. R. Co. to comply with an Order of the Commission to keep platform gates or vestibule doors in all electrically operated trains in the First District closed and trap doors lowered while trains were in motion, and to provide at least one motorman and a guard for each train opening to open and close the gates or vestibule doors and trap doors of trains at stations, passengers on said trains continued to be in danger of life and limb. HELD,—that in view of admission by the respondent that on crowded trains one trainman for each train opening could not attend to the gates and collect the fares, an Order will be entered in terms similar to the previous Order but without specifying the minimum number of trainmen to be carried, and the respondent will be held to strict compliance with the spirit as well as the letter of the Order.

Safety Precautions—Electrically Operated Railroads—Adequate Manning of Trains to Prevent Accidents—Guards at Openings.—As some of the electrically operated lines of the respondent within the First District have the character of suburban lines, it is not deemed necessary to station a guard at all train openings to prevent accidents and another trainman to collect fares, which would prove a hardship to the respondent, but if the Order entered herein be not effective to safeguard passengers, further hearings will be had and an Order entered directing permanent stationing of trainmen at all train openings.

Hearings closed November 26, 1915. Opinion adopted April 7, 1916.

This proceeding was upon the motion of the Commission and was started by a Resolution for a hearing adopted October 27, 1915. It arose out of complaints against the failure of The Long Island Railroad Company to safeguard passengers on electrically operated trains against accidents caused by open gates and raised trap doors while trains were in motion. Two Orders requiring among other things that the company instal gates and trap doors and provide at least one trainman at each train opening to attend to the same had been entered on April 5, 1910, in Cases Nos. 1191 and 1192, pursuant to an Opinion adopted therein, but the Orders were not properly complied with by the company. (For the Opinion and Orders in Cases Nos. 1191 and 1192 see 2 P. S. C. R. [1st Dist. N. Y.] 285.)

As the conditions complained against existed on trains of The Long Island Railroad Company operated in both the First and

Second Districts, the Public Service Commission for the First District and the Public Service Commission for the Second District held two joint hearings in the case on November 11 and November 26, 1915, respectively, whereupon an Opinion of Commissioner Hayward was adopted at a joint meeting of both Commissions on April 7, 1916, and an Order entered pursuant thereto. On April 13, 1916, the Order of April 7th was rescinded and the Counsel to the Commission was directed to prepare separate Orders for adoption by the Commission for the First District and the Commission for the Second District. On April 20, 1916, the Public Service Commission for the First District entered an Order set out below, and on April 25, 1916, the Public Service Commission for the Second District entered a similar Order.

A hearing having been duly had by and before both commissions in the above entitled matter on November 11 and November 26, 1915; and the commissions having determined after the proceedings on said hearing that certain regulations and practices of The Long Island Railroad Company upon the various lines of railroad operated by said company with electricity as a motive power, in respect to the transportation of passengers within the state, are unsafe, improper and inadequate and that changes in such regulations and practices in the particulars following ought reasonably to be made in order that the service of said company shall be safe, proper and adequate; and the commissions having determined after the proceedings on said hearing that all cars used and operated by said company with electricity as a motive power on said lines of railroad in the transportation of passengers within the state should be equipped as hereinafter provided in order to promote the security and convenience of the public and in order to secure adequate service and facilities for the transportation of passengers; and it appearing to both commissions that in respect of the above mentioned subject matter separate jurisdiction has not been conferred and that the determination herein should be by joint order,

ORDERED

(1) That all cars now or hereafter used and operated by The Long Island Railroad Company upon said lines of railroad in the transportation of passengers within the state and operated by electricity as a motive power shall be equipped with platform gates of proper design, or said cars shall be equipped with vestibule doors.

(2) That all cars now or hereafter used and operated by said company upon said lines of railroad in the transportation of passengers within the state and operated by electricity as a motive power and equipped with platforms with steps for the convenient ingress and egress of passengers shall in addition to being equipped with gates or vestibule doors at the outer edges of their platforms be also equipped with trap doors which when lowered or let down shall be on a level with the platforms and shall be so arranged as to cover the openings over the steps between the edges of the platforms and the gates or vestibule doors, which trap doors shall be of the most improved design.

(3) That on all such cars no platform gates or vestibule doors shall be opened or trap doors raised (where it is necessary to raise them) until the train shall have been brought to a stop, and on all

such cars all platform gates or vestibule doors shall be closed and all trap doors lowered (if trap doors have been raised) before the signal is given for the train to start, and on all such cars all platform gates or vestibule doors shall be kept closed and all trap doors lowered at all times while trains are in motion; and said company shall make and enforce a rule to that effect.

(4) That on no such car shall any gate or vestibule door or trap door be opened by any person other than an employee of said company duly authorized to open the same; and said company shall make and enforce a rule to that effect.

(5) That in each such car equipped with vestibule doors a notice substantially in the following form shall be posted and conspicuously fastened up on or before June 1, 1916:

NOTICE

All vestibule doors and trap doors on this train must be closed before the train starts and kept closed while the train is in motion. No such door shall be opened till the train shall have come to a full stop.

Passengers are forbidden to open vestibule doors or trap doors of cars.

Trainmen must obey and enforce this rule.

By order of

PUBLIC SERVICE COMMISSIONS

(6) That in each such car equipped with platform gates instead of vestibule doors a notice substantially in the following form shall be posted and conspicuously fastened up on or before June 1, 1916:

NOTICE

All gates and trap doors on this train must be closed before the train starts and kept closed while the train is in motion. No such gate or door shall be opened till the train shall have come to a full stop.

Passengers are forbidden to open gates or trap doors of cars.

Trainmen must obey and enforce this rule.

By order of

PUBLIC SERVICE COMMISSIONS

(7) That this order shall take effect immediately and shall continue in force until changed or abrogated by further order of the Commissions.

(8) That on or before May 10, 1916 said The Long Island Railroad Company shall notify the Commissions in writing whether the terms of this order are accepted and will be obeyed.

H. M. Chamberlain and Arthur DuBois, for the Commission.

John F. Keany and Alfred A. Gardner, for The Long Island Railroad Co.

HAYWARD, Commissioner: The electric trains of The Long Island Railroad run from two main western terminals, Pennsylvania Station in Manhattan, and Flatbush Avenue Station in Brooklyn. A few also run out of Long Island City. The traffic is divided approximately as follows: 60% from the Flatbush Avenue Station, 30%

from the Pennsylvania Station, and 10% from Long Island City. From the Pennsylvania Station trains run on the North Side Division to Port Washington and White Stone Landing, as well as on the Rockaway Beach Division to Far Rockaway, and on the main line to Jamaica. Trains from the Flatbush Avenue Station run to Jamaica on the Atlantic Avenue Division and to Far Rockaway on the Rockaway Division. Service to Jamaica is divided into two parts: first, local service which runs from Flatbush Avenue as far as Queens to two miles beyond Jamaica, and some thirteen miles from Brooklyn; second, the express service which makes only two or three stops between Flatbush Avenue Station and Jamaica. This express service and the service from Pennsylvania Station to Jamaica, either connects at Jamaica with the steam trains, which serve the eastern part of the Island, or continues on past Jamaica (1) on the Central Extension to Hempstead, (2) through Lynbrook to Long Beach, or (3) through Valley Stream to Far Rockaway.

All of these electrified lines are within the City of New York with the exception of the extremities of the Long Beach, North Side, Hempstead and Far Rockaway Branches. Of 115 Stations, 74 are within the First District.

Part of these stations are on the ground level and part are on a level with the car floors. It is necessary, therefore, to have the cars equipped with trap doors which close over the steps for use on high level stations and are opened so that the steps may be used at the low level stations.

It has been the subject of frequent complaint, and has been definitely established in this and a previous proceeding (Case 1192 before this Commission) that these electrified trains have been inadequately manned, so that either gates have been left open and trap doors raised while the trains were in motion, or passengers have been forced to open them themselves. Besides being greatly inconvenient to a great body of the travelling public, this condition is highly dangerous. Trains run over trestles, in tunnels and on bridges where the ordinary danger of falling down a trap door or out of an open gate is greatly enhanced. Frequently the trains carry large numbers of standing passengers who crowd on to the platforms and are always in danger of accident if gates and trap doors are left open while the trains are in motion. Moreover, if it is a practice to leave these openings unprotected, there will always be a certain proportion of rash persons who will take advantage of it

to leap on moving trains, to the imminent danger of their lives and limbs.

The requirements of proper service and good railroading in this regard could not be better defined than in the rule of the Pennsylvania Railroad as to trains entering and leaving the Pennsylvania Station. This is as follows:

"The vestibule doors of cars must be closed while trains are in motion. * * * Trap doors must be closed. To avoid personal injury or loss of life, employes must see that unauthorized persons do not open the vestibule side or trap doors of cars."

It seems to me the plain duty of the Public Service Commissions to promulgate such regulations as will bring about the condition contemplated by this rule.

The question of the form which the order should take is a difficult one. In the former case before this Commission, an order was adopted and is now in force as to the trains running exclusively within the First District. This order provides "that platform gates or vestibule doors shall be kept closed and trap doors lowered at all times while trains are in motion", and "that all such trains, * * * shall have a proper and safe complement of trainmen, which shall consist of at least one motorman and a guard for each train opening to open and close the gates or vestibule doors and trap doors of trains at stations". This order has by no means been lived up to by the railroad company, which admits its failure in many cases to have sufficient trainmen to open the doors and further admits that on crowded trains it is impossible, even with a trainman for each train opening, for that trainman to collect the fares and to attend to the gates.

Counsel to the Commission urges that we direct that a trainman be permanently stationed at each train opening just as they are on the rapid transit lines in the city. The fact that the service on many of the lines is precisely similar to that on the rapid transit lines, and the failure of the railroad company to live up to the terms of the order heretofore issued, both urge me to recommend that the railroad be required to have all of their gates permanently manned, and furnish other men to collect fares, etc. But there is no doubt that such a provision would be a great hardship, since the railroad must pay union wages to its employees, and furthermore, certain

of the lines have more nearly the character of suburban lines than of rapid transit lines, so that such a provision would not be necessary for the safeguarding of the passengers.

I, have, therefore, come to the conclusion that an order should be issued in general terms much the same as the order now in effect, but without specifying the minimum number of trainmen to be carried. To see that train openings are closed while trains are in motion, requires at least one trainman to each train opening and I believe that the simpler an order is, the more easily it may be enforced. The order should also contain provision for posting notice of these regulations in the cars, which notice should prohibit the operation of doors, gates and trap doors by passengers or other unauthorized persons.

The railroad should understand, however, that it will be expected to live up to the spirit, as well as the letter of this order, that any infractions will be vigorously prosecuted and that if it is found that the order as adopted is not sufficient to bring about the desired result, further hearings will be held to the end that an order may be entered directing permanent stationing of trainmen at all train openings.

(STRAUS, *Chairman*, HODGE, WHITNEY and HERVEY, *Commissioners*, concurring.)

In the Matter of the Hearing Before Both Commissions Concerning the Tracks, Structures and Other Property of THE NEW YORK CENTRAL RAILROAD COMPANY and THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY at or Near 241st Street, in the Borough of The Bronx, City of New York.

CASE No. 1929

Stations and Station Facilities—Construction of Southbound Station and Northbound Platforms at 241st Street—Plans Approved.—In view of the circumstances herein a Resolution will be adopted approving the plans of The New York Central Railroad Company providing for the immediate construction of the southbound station at 241st Street and a platform only at the northbound side thereof, with a temporary overhead footbridge across the tracks upon conditions, (1) that the applicant will construct the station on the northbound platform whenever required by the Commission so to do; (2) that northbound passengers will be per-

mitted to pay their fare upon the trains without excess charge; (3) that the applicant will, upon the Order of the Commission, build the viaduct provided in paragraph (2) of the Order entered herein on August 3, 1915, of concrete instead of steel, provided that the Bronx Parkway Commission will pay the difference in cost; and (4) that the applicant submit plans for said viaduct for the approval of the Commission.

Hearings closed June 29, 1915. Opinion adopted April 13, 1916.

This proceeding was upon the motion of the Commission concerning the elimination of grade crossings of The New York Central Railroad Company and The New York, New Haven and Hartford Railroad Company at 241st Street, just south of the city limits in the Borough of The Bronx, in connection with certain other grade crossing eliminations in the City of Mount Vernon in the Second District. The changes in Mount Vernon necessitated a partial change of route in the tracks in The Bronx and the relocation of the station at East 241st Street.

On May 17, 1915, the Public Service Commission for the Second District adopted a Resolution urgently commending to the Public Service Commission for the First District "an immediate relocation of the tracks of the New York Central Railroad (Harlem Division) south of 241st Street to connect with the already relocated tracks of said railroad directly north of that street." Pursuant thereto the Commission entered an Order on May 28, 1915, directing the relocation of the tracks and the elimination of grade crossings at 241st Street. This Order was superseded by an Order entered on August 3, 1915, at the joint meeting of the Commissions for the First and Second Districts.

The Order entered August 3, 1915, required The New York Central Railroad Company and The New York, New Haven and Hartford Railroad Company to enter into an agreement with the municipalities concerned for the improvements required by the Order. The Order required the closing of 241st Street and 242d Street between the westerly line of Bullard Avenue and the center line of the Bronx River in the City of New York, and the opening of a new street or crossing within the lines of East 241st Street, in the City of New York, and Wakefield Avenue, in the City of Yonkers. The cost of constructing the new street and approaches was to be apportioned, under the Order, according to the provisions of Section 94 of the Railroad Law, which requires the companies to pay one-half, the State one-quarter, and the municipalities one-quarter of the cost of the improvements made within their boundaries.

Upon the request of the Board of Estimate and Apportionment

of the City of New York the Commission extended, from time to time, the dates for the execution of the agreement between the companies and the municipalities and for the commencement and completion of the improvements. The last extension granted on October 19, 1915, set the date for the execution of the agreement on November 20, 1915, the commencement of the work on December 31, 1915, and the completion thereof on October 1, 1916. But as the city authorities were unwilling to approve the expenditure of money for the purposes provided in the Order of the Commission, the Board of Estimate and Apportionment directed the Corporation Counsel, by Resolution adopted October 15, 1915, to sue out a writ of certiorari to determine the powers of the Commission to change the city map and impose upon the city the cost of the improvement. The writ was obtained from Mr. Justice Giegerich of the Supreme Court, New York County, on December 3, 1915, and on December 7, 1915, the Attorney General of the State of New York obtained a similar writ from Mr. Justice Whitaker of the Supreme Court, New York County.

On October 5, 1915, and December 21, 1915, the Commission approved plans for the proposed viaduct.

On April 13, 1916, the Commission adopted a Resolution pursuant to an Opinion of Commissioner Hodge, adopted on that day, approving plans for a permanent station and a temporary crossing at 241st Street. The Resolution was superseded by a Resolution adopted April 27, 1916, which was substantially the same except that the clause providing that it should not go into effect until similar action had been taken by the Public Service Commission for the Second District was omitted therefrom.

The Resolution of April 27, 1916, was as follows:

WHEREAS on August 3, 1915 an order was adopted by both Commissions directing that certain improvements be made at and near the point where East 241st Street and East 242nd Street in the City of New York are crossed by the tracks of The New York, New Haven and Hartford Railroad Company and The New York and Harlem Railroad Company (leased to and operated by The New York Central Railroad Company); and

WHEREAS in and by paragraph (1) of said order it was provided that at and near the points of intersection above mentioned the railroad of The New York and Harlem Railroad Company (leased to and operated by The New York Central Railroad Company) should be removed from its present location to a changed line of said railroad located a short distance to the west of said points of intersection; and

WHEREAS in and by paragraph (2) of said order it was provided that East 241st Street and East 242nd Street between the

westerly line of Bullard Avenue and the center line of the Bronx River in the City of New York should be closed and discontinued and that traffic thereon should be diverted to a new street or crossing to be constructed within the lines of East 241st Street in the City of New York as at present existing and substantially within the lines of Wakefield Avenue in the City of Yonkers as at present existing, such new street or crossing to extend approximately from the westerly side of Carpenter Avenue in the City of New York to the easterly side of Webster Avenue or Bronx River Road in the City of Yonkers; and

WHEREAS in and by paragraph (7) of said order it was provided that a new station building should be constructed at the point where said changed line of railroad intersects and crosses East 241st Street to take the place of the existing station which had been found to be inconvenient, inadequate and unsafe, such new station building to be constructed with the necessary approaches, platforms, stairways, ticket offices, waiting rooms, toilets and other appurtenances and to be in all respects safe, adequate and convenient for the service of the public; and

WHEREAS in and by paragraph (8) of said order it was provided that if the operation of trains on said changed line of railroad should be desired before the completion of said new street or crossing and said new station, then and in that event the railroad corporation or corporations interested should at its or their own expense make ample and adequate temporary provision at said East 241st Street intersection for the safe and convenient passage of pedestrians over said changed line of railroad, and should provide ample and adequate temporary station facilities at said point; and

WHEREAS in and by paragraph (9) of said order it was provided that plans, specifications and details of all the work therein specified whether temporary or permanent should be submitted to and approved by the Commission before the letting of any contract and before any construction work is done whether it is done by contract or not; and

WHEREAS by resolution adopted on October 5, 1915 this Commission duly approved a general plan showing proposed location of tracks as provided in paragraph (1) of said order, and a general plan showing proposed elevations, grades, sections, etc. of the proposed new street or crossing (or viaduct) as provided in paragraph (2) of said order; and

WHEREAS by resolution adopted on December 21, 1915 this Commission duly approved certain revised plans showing proposed location of tracks as provided in paragraph (1) of said order and showing proposed elevations, grades, sections, etc. of the proposed new street or crossing (or viaduct) as provided in paragraph (2) of said order; and

WHEREAS said The New York Central Railroad Company has now made application under date of January 8, 1916 for the approval by the Commission of certain plans showing proposed temporary crossing over the changed line of railroad at East 241st Street and showing proposed permanent station facilities at said point, said plans being as follows:

1. Proposed passenger station at Wakefield, N. Y. Scale: $\frac{1}{8}"=1'$. Drawing No. 1.
2. Proposed passenger station at Wakefield, N. Y. Scale: $\frac{1}{8}"=1'$. Drawing No. 2.
3. N. Y. C. R. R. Temporary station bridge and stairs and permanent stairs, Wakefield. Scales: $1/20"$ and $\frac{1}{8}"=1'$. Dated Dec. 2, 1915.

4. Plan without title or date, showing proposed new viaduct at 241st Street and station building, platforms and stairways. Scale: 1"=50'.

and

WHEREAS the Commission is of the opinion that said plans should be approved, subject, however, to the conditions hereinafter stated:

RESOLVED that this Commission hereby approves the said plans and that the Secretary of this Commission be and he hereby is directed to endorse upon each of said plans the approval of this Commission; provided, however, and this approval is granted upon the conditions following and not otherwise, to wit:

1. That said company will construct a station on the northbound platform at Wakefield similar to the station shown on said plans to be erected on the southbound platform, whenever required by the Commission so to do, without recourse to the courts, provided, however, that New York Central Railroad Company shall be given a hearing before the Commission upon the necessity of construction of said station.

2. That said company will permit northbound passengers from said station to pay their fare upon the trains without any excess charge because of their failure to purchase tickets until a northbound station shall be built, and will immediately make and thereafter enforce a rule to that effect.

3. That said company will build the viaduct provided for in paragraph (2) of the order herein dated August 3, 1915, of concrete instead of steel, if the Commission so orders, provided the Bronx Parkway Commission will pay the difference in cost, including the cost of preparing plans for the steel viaduct which will in that case be discarded.

4. That the company will immediately prepare plans for said viaduct and submit them to the Commission for its approval.

RESOLVED FURTHER that said company shall immediately file with the Commission a stipulation covering the above named conditions, and the approval of this Commission shall not be indorsed on the plans now submitted unless and until such stipulation shall be duly filed.

RESOLVED FURTHER that this resolution take effect immediately.

H. M. Chamberlain, for the Commission.

George H. Walker, for The New York Central Railroad Co.

Charles M. Sheafe, Jr., for The New York, New Haven and Hartford Railroad Co.

W. J. Clark, for the Corporation Counsel of the City of New York.

Nelson P. Lewis, for the Board of Estimate and Apportionment.

William W. Penfield, for petitioners.

Joseph L. Zoetzel, and *Julius H. Haas*, for the Wakefield Taxpayers Alliance.

Thomas C. Blake, for Thomas S. Walker.

L. G. Holleran, for the Bronx Parkway Commission.

Philip S. Bolton, for the Taxpayers and Property Owners Association.

Morris S. Schector, for the Attorney General of the State of New York.

George W. M. Clark and *C. W. Schmidke*, for the Woodlawn Heights Taxpayers Association.

Frank A. Bennett, for the City of Mount Vernon.

M. J. Murphy, *Father Francis Moore* and *Mrs. Schuman*, property owners in person.

HODGE, Commissioner: At the Hearing of this case Mr. Bassett for the railroad company stated that the tentative plans were laid out to have a station on the Viaduct of the nature of the Highbridge or University Heights station. The railroad company now submit plans showing a brick station for the south-bound track at the level of the tracks. The Chief Engineer by letter dated January 24th approves of this position of the station. The Counsel by letter of February 23rd is of the opinion that it is not in accordance with the testimony of Mr. Bassett as above given.

I have looked into this matter and find that this Viaduct cannot be proceeded with immediately as the City and State have taken an Appeal, and for this reason the City will not approve the plans for the Viaduct, so it is impossible to at present build the station on the Viaduct. The railroad company submitted plans for an ornamental and entirely satisfactory brick station with all conveniences located on the south-bound track, together with a temporary foot bridge crossing over the tracks. They also are willing to stipulate

FIRST, that the Company will construct a station on the north-bound platform similar to the one shown for the south-bound platform, whenever requested by the Commission so to do, without further Hearings or recourse to the courts.

SECOND, that the Company will permit north-bound passengers from such station to pay their fare, on any trains without excess charge.

THIRD, that the Company will agree to build the Viaduct of concrete instead of steel provided the Bronx Parkway Commission will pay the difference in cost.

FOURTH, that the Company will immediately prepare plans for said Viaduct and submit them to this Commission for its approval without waiting for the trial of the Appeal taken by the City.

In view of the fact that it is necessary to put in operation the tracks in their new positions at this point at the earliest possible

moment so as to allow the elimination of grade crossings further north, and of the further fact that the station as submitted fully takes care of the needs of the passengers going south, and that in my opinion there is no immediate need of a station on the north-bound track as the railway engineers state that traffic north does not exceed 10 or 12 passengers a day, I would recommend the adoption of the plan as submitted as per Resolution hereto attached.

(STRAUS, *Chairman*, HAYWARD, WHITNEY and HERVEY, *Commissioners*, concurring.)

In the Matter of the Hearing on the Complaint of EDWARD B. BRUCH against THE CONSOLIDATED GAS COMPANY OF NEW YORK, on account of the Rules and Regulations of said Company with respect to the Leasing of Gas Ranges.

CASE No. 1915

Gas Range Leases—Term of Leases—Annual Leases from April to April Permitted—Former Order Abrogated.—Upon complaint against the practice of the C. G. Co. of N. Y. of leasing gas ranges only for annual terms beginning and ending in April so as to prevent their removal and loss of rental therefrom during the fall and winter seasons when coal stoves are more largely used, it appeared that said practice was objectionable to numerous landlords who desired gas range rentals to be coterminous with the apartment leases beginning and ending in October, so as to prevent removal of tenants and loss of rentals during the summer season, while numerous other real estate operators opposed interference by the Commission. HELD—that in view of divided opinion among landlords and the merititious claim of the respondent to be free to fix the term of lease of gas ranges, as are the landlords to fix the term of apartment leases, an Order will be entered abrogating an Order entered herein on April 30, 1915, which provided that after the first year's rental a gas range lease might be terminated on thirty days' notice.

Hearings closed October 19, 1915. Opinion adopted April 27, 1916.

This proceeding was upon the complaint of Edward B. Bruch against the practice of The Consolidated Gas Company of fixing the term of lease of gas ranges from April to April. On March 19, 1915, the Commission entered an Order directing a hearing in the matter.

On April 30, 1915, the Commission entered an Order directing the company to modify its rules and regulations so as to permit the termination of a gas range lease after the first year's rental upon thirty days' notice to the company.

Upon the advice of Counsel to the Commission, an application of the company for a rehearing was granted on September 24, 1915, after a previous application for a rehearing had been denied on May 18, 1915.

On April 27, 1916, pursuant to an Opinion of Commissioner Hayward adopted on that day, the Commission entered an Order abrogating the Order entered April 30, 1915.

The further facts in the matter are set forth in the Opinion adopted.

H. H. Whitman, for the Commission.

Harry Dubinsky, for the complainant.

John A. Garver and *P. F. W. Ruther*, for the respondent.

Eugene S. Van Riper, *William A. Shelton* and *T. Ward Wasson*, for property owners.

HAYWARD, Commissioner: The complaint in this matter was filed in March, 1915, and the first hearing was held on April 8th, 1915 before Commissioner Cram. The condition complained of was that the Consolidated Gas Company made its gas range rentals run from April 1st to April 1st, while the majority of apartment leases run from October 1st to October 1st. The result is that the landlords of apartments which are vacated in October, have to pay six months rental for gas ranges installed by them, whereas if the apartment is not reoccupied, they lose the use of the stove altogether, and if the apartment is reoccupied, they must in many cases, to please incoming tenants, install a new range and start a new rental contract. The Gas Company makes no rebates for periods in which the gas ranges are not used.

It seems that the custom of making apartment rentals run from October to October was inaugurated because it was found that where leases ran from May to May, the thrifty tenant would go away for the summer and rent a new apartment in the fall for six months. On the other hand, the Gas Company claims that the reason its gas range rentals are fixed from April 1st to April 1st is that otherwise the thrifty tenant would order his gas range out in the fall when he could more profitably use coal, and have another range put in in the spring when the use of gas was more comfortable and economical.

The complainant was backed in his demand that the gas company make its rentals run from October to October by Lawrence M. D. McGuire, President of the Real Estate Board of Brokers,

who stated that in his opinion, the landlords of New York City paid the Consolidated Gas Company about \$1,000,000. per year for rental of gas ranges at from \$1. to \$5. per range. He was also supported by T. Ward Wasson, Secretary and Treasurer of Knap & Wasson, 4249 Broadway, and Secretary of the Upper Manhattan Property Owners Association, and by two other realty owners. The complainant himself is a real estate broker and agent.

On April 30, 1915 an order was entered providing that after the first year's rental, a gas range lease might be terminated on thirty days' notice. On May 18th the company applied for a rehearing, which application was denied. On June 29th counsel for the Commission was instructed to enforce the order. On July 1st counsel wrote to Commissioner Williams mentioning a conversation between Mr. Whitman and the Commissioner in which Mr. Whitman was advised that no action was to be taken to enforce the order, Chairman McCall having reached an agreement with Mr. Cortelyou that the company was to test the order in operation, and its time for acceptance was to be extended. On September 11th the company advised the Commission that they were about to file an application for rehearing. Mr. Cortelyou stated that he had not understood that "any test of the order would be made" but that he had agreed that the order would be "informally complied with", whatever that means.

September 24th, 1915 a rehearing application was filed and a rehearing granted. The hearing was held before Commissioner Williams on September 30th, at which time no other testimony was given with the exception that representatives of the Realty Notice Corporation, The Allied Real Estate Interests and the Advisory Council of Real Estate Interests were present, all of whom spoke in favor of the abrogation of the order, stating that they considered the present practice just and proper. They had evidently been impressed by the company's assertion that it would go out of the gas rental business if any change of method was forced upon them. The Commission also received several letters from real estate operators such as Joseph P. Day, Slawson & Hobbs, Mark Rafalsky & Co., Douglas Robinson, Charles S. Brown & Co., etc. asking that the order be rescinded. Other letters were received in November of that year indicating that the gas company had notified the real estate operators that the Commission had already rescinded its former order.

No action has ever been taken by the Commission either to abrogate or affirm the final order entered on April 30th, 1915.

I very much doubt the advisability of the order in this case, particularly in view of the divided sentiment among real estate operators on the question. It would seem that there is some merit in the contention of the Gas Company that they have as much right to fix their rental periods from April to April to keep their stoves installed during the winter, as the landlords have to make their rental periods run from October to October in order to keep apartments occupied during the summer.

I therefore believe that the former order should be abrogated unless the Commission desires to hold further hearings and go into the matter *de novo*.

(STRAUS, *Chairman*, HODGE, WHITNEY and HERVEY, *Commissioners*, concurring.)

In the Matter of the Hearing on the Motion of the Commission as to Through Routes and Joint Rates of the THIRD AVENUE RAILWAY COMPANY, THIRD AVENUE BRIDGE COMPANY, BELT LINE RAILWAY CORPORATION, THE FORTY-SECOND STREET, MANHATTANVILLE AND ST. NICHOLAS AVENUE RAILWAY COMPANY and SECOND AVENUE RAILROAD COMPANY in the City of New York, and John Beaver, its Receiver.

CASE No. 2087

Through Routes and Joint Rates—Street Railroad Corporations—Of Alternative Routes One Involving Less Congestion and Opposition Preferable.—Where in the establishment of a through route over the Queensboro Bridge alternative routes from the Bridge to 59th Street via Second Avenue or via 60th Street and Third Avenue could be adopted but the former, although more readily available, would cause greater congestion of traffic and opposition against the use of tracks of another company, the latter route will be preferred.

Through Routes and Joint Rates—Street Railroad Corporations—Route from Tenth Avenue over Queensboro Bridge Adopted.—An Order will be entered directing the establishment of a through route and joint rate from Tenth Avenue to Queens Plaza of the Queensboro Bridge, eastbound via 59th Street to the bridge, and westbound via 60th Street and Third Avenue to 59th Street.

Hearings closed April 20, 1916. Opinion adopted April 27, 1916.

This proceeding was upon the motion of the Commission and was started by a Resolution for a hearing adopted on April 13, 1916,

to determine if a through route should be established from Tenth Avenue and 59th Street, Manhattan, to the Queens Plaza of the Queensboro Bridge.

On April 27, 1916, pursuant to an Opinion of Commissioner Hayward, adopted on that day, the Commission entered an Order as follows:

A hearing having been had herein before the Commission on April 17, 1916 and on certain adjourned dates, and the Commission being of opinion after said hearing that the 59th Street Line of the Belt Line Railway Corporation and the Queensboro Bridge Line operated by the 42nd Street, Manhattanville and St. Nicholas Avenue Railway Company and the Third Avenue Line operated by the Third Avenue Railway Company form or can be made to form a continuous or connecting line of transportation by the construction and maintenance of switch connection,

Now, THEREFORE, IT IS

ORDERED that Belt Line Railway Corporation, 42nd Street, Manhattanville and St. Nicholas Avenue Railway Company and Third Avenue Railway Company be and they hereby are required to establish on or before December 15, 1916 and thereafter to maintain through routes for the transportation of passengers by the operation of through cars between the points and upon the lines specified in the following schedule, and be and hereby are required on or before said date to establish and put in force a joint rate or fare for each passenger of not more than five cents; and said companies are hereby required on or before June 1, 1916 to agree as to the portion of such joint rates, fares or charges to which each of them shall be entitled:

SCHEDULE OF THROUGH ROUTES

(Eastbound)

The through route shall include at least the following streets:

From Tenth Avenue east on 59th Street to Second Avenue over the line of the Belt Line Railway Corporation; thence still easterly over the line of the 42nd Street, Manhattanville and St. Nicholas Avenue Railway Company on Queensboro Bridge to Queensboro Plaza.

(Westbound)

From Queensboro Plaza on line of 42nd Street, Manhattanville and St. Nicholas Avenue Railway Company on Queensboro Bridge westerly to Second Avenue; thence still westerly on line of 42nd Street, Manhattanville and St. Nicholas Avenue Railway Company on 60th Street to Third Avenue; thence southerly on line of Third Avenue Railway Company on Third Avenue to 59th Street; thence westerly on line of Belt Line Railway Corporation on 59th Street to Tenth Avenue.

FURTHER ORDERED that Belt Line Railway Corporation, 42nd Street, Manhattanville and St. Nicholas Avenue Railway Company and Third Avenue Railway Company construct and maintain such interchange or connecting track as may be necessary to permit of the operation of the route above described.

FURTHER ORDERED that nothing in this order shall be construed as requiring the operation of all 59th Street cars across the Queensboro Bridge, and that nothing contained in this order shall be construed as limiting the right of said companies to operate through cars from West 42nd Street Ferry to Queensboro Plaza via West 42nd Street, Tenth Avenue, 59th Street and Queensboro Bridge and return.

FURTHER ORDERED that this order shall take effect immediately and that the Belt Line Railway Corporation, 42nd Street, Manhattanville and St. Nicholas Avenue Railway Company and Third Avenue Railway Company notify the Commission on or before December 20, 1916 whether the said through route and joint rate has been established, what the rate so established is and what portion of such rate each company is to receive.

Arthur DuBois, for the Commission.

Herbert J. Bickford and *Brainard Tolles*, for all the street railroad companies herein.

Edward A. Maher, for the Third Avenue Railway Co.

Peter A. Leminger, for the Sunnyside Taxpayers Assn.

HAYWARD, *Commissioner*: This is a hearing to determine the advisability of requiring the Third Avenue Railroad system to operate certain cars of its 59th Street line across the Queensboro Bridge and, if such operation seems advisable, to determine the route to be taken.

It is practically admitted that a great number of people would be inconvenienced by such operation, which has been in contemplation for some time. The question for our determination therefore is what route this service should take. The possible routes are two, by either of which the cars would run east on 59th Street to Second Avenue, cross the bridge and return to the westerly end of the bridge at 60th Street and Second Avenue. From here, however, it is possible for the westbound cars to proceed either:

(1) West on 60th Street to 3rd Avenue, south on Third Avenue to 59th Street and thence west on 59th Street, or

(2) South on Second Avenue to 59th Street and west on 59th Street.

If either route is adopted, one turnout would have to be installed: in the first case at Third Avenue and 59th Street; in the second at Second Avenue and 60th Street.

In favor of the Second Avenue route (2) there is the factor that the special work for the turn at Second Avenue and 60th Street has already been obtained, so that operation could be inaugurated more promptly than if the other route be adopted. Also the turn at 59th Street and Second Avenue would be wider and more easily operated than that at 59th Street and Third Avenue.

On the other hand, I am thoroughly convinced that operation by way of 60th Street and Third Avenue would entail much less interference with traffic than would operation on Second Avenue.

The vehicular traffic on the two avenues is practically the same, but if cars were to turn from west to south at 60th Street, they would seriously interfere with the stream of vehicles that comes to the westerly end of the bridge and proceed west on 60th Street. The operation of cars along 60th Street is with this traffic and does not delay it but any turning of cars at this point would cross it and cause unnecessary congestion.

Moreover, to order operation on Second Avenue would involve operation on the tracks of the Second Avenue Railroad Company, which is vigorously opposed by the receiver of that company, while the operation by way of 60th Street would involve the tracks only of controlled companies of the Third Avenue system.

These considerations in favor of this latter operation (west through 60th Street, south on Third Avenue and again west on 59th Street) seem to me to be conclusive and I recommend that an order be made directing the inauguration of this service at the earliest possible date.

(STRAUS, *Chairman*, HODGE, WHITNEY and HERVEY, *Commissioners*, concurring.)

In the Matter of the Application of THE DRY DOCK, EAST BROADWAY AND BATTERY RAILROAD COMPANY for the Consent of the Public Service Commission for the First District to Make and Issue its Refunding Mortgage and Deed of Trust to Central Trust Company of New York, as Trustee, and to Issue Thereunder About \$560,000 Series B Bonds and \$2,240,000 Series C Bonds to Refund Certain of its Debts and Obligations.

CASE NO. 1715

Valuation—Street Railroad Corporations—Cost of Reproduction Less Depreciation.—Upon an application of the D. D. E. B. & B. R. R. Co. for an issue of bonds to refund outstanding obligations the Commission finds that on August 1, 1915, the cost of reproduction new of the applicant's property was \$3,279,870, that the estimated depreciation was 27½ per cent or \$896,801 and that the then present value of said property was \$2,383,069.

Capitalization—Street Railroad Corporations—Investment in Property—Amount of Securities Issuable.—The investment in the applicant's property from 1864 to August 1, 1915, after deducting accrued depreciation of \$229,229.50 and replacements in the amount of \$710,424.03, amounted to \$2,778,117.13, the capitalization of which will be approved upon an application for the issue of bonds for \$1,828,385 (amended to \$2,030,000) in addition to bonds outstanding for \$950,000.

Accounts and Funds—Depreciation Reserve—Cost of Additions and Betterments Made Out of Surplus Diminishable by Amount of Depreciation for Capitalization Purposes.—In the valuation of the applicant's property for capitalization purposes allowance was claimed for additions and betterments made out of surplus without deduction for depreciation on the ground that the system of accounts recommended by the State Board of Railroad Commissioners did not provide specifically for depreciation reserve. HELD,—that under section 31 of the R. R. Law of 1850 the applicant was required to file an annual report and to specify in detail the book charges for maintenance and depreciation, that accounting rules universally recognized the necessity for a depreciation reserve, and that it is a sound doctrine based upon the unassailable proposition that the wasting of physical property must be provided against out of income.

Valuation—Appreciation of Land—Appreciation of Land Offset against Depreciation Reserve.—The allowance claimed by the applicant for appreciation in real estate should be offset against accrued depreciation of physical property.

Valuation—Franchise Value—Claim for Franchise Value Disallowed.—No payment having been made for franchises to the State or to individuals a claim for franchise value is not allowed.

Capitalization—Street Railroad Corporations—Refunding of Outstanding Obligations.—The applicant asked for the approval of an issue of bonds for the purpose of refunding, among others, \$1,100,000 certificates of indebtedness, which had been issued as stock dividends but which were alleged to represent investment in additions and betterments paid for out of surplus. HELD,—that not more than \$481,000 represented

capital expenditures, which sum will be allowed to be capitalized by the issue of new securities.

Capitalization—Refunding of Obligations of Bankrupt Corporations—Neither Value of Property nor Earning Capacity but Expenditures for Capital Purposes the Measure of Lawful Capitalization.—Pursuant to a decision of the App. Div. of the Supreme Court, New York County, sustaining the Commission's refusal to approve a former application of the D. D. E. B. B. R. Co. for an issue of securities to refund outstanding obligations and wind up the receivership, in which the court held that the Commission was in error in applying the test of the actual value of the applicant's property and its earning capacity as a measure for the issue of new securities, and directed the Commission to the considerations, under section 55 of the P. S. C. L., (1) whether the proposed issue is reasonably required for the refunding purpose, (2) whether the expenditure to be refunded is a capital as distinct from an operating or income charge, and (3) if an operating charge whether it should nevertheless be permitted under the exception clause thereof, the present application for an issue of bonds for \$2,760,000 will again be denied without prejudice to a new application for an issue of bonds not to exceed \$1,828,385 (amended to \$2,030,000) which properly represents expenditures for capital purposes.

Bond Issue—Street Railroad Corporations—Amount of Securities Issuable—Amendment of Former Determination.—Upon the discovery of missing records which may justify a larger issue of securities, an application will be entertained for the issue of bonds for \$2,030,000 instead of \$1,828,385, as heretofore authorized.

Hearings closed January 26, 1916. Opinions adopted May 4 and May 25, 1916.

By an Order entered on April 28, 1914, the Commission denied an application of The Dry Dock, East Broadway and Battery Railroad Company to execute a refunding mortgage and deed of trust to the Central Trust Company of New York, as Trustee, for \$4,300,000 and to issue thereunder about \$560,000 Series B bonds and \$2,240,000 Series C bonds for the purpose of refunding certain debts and obligations of the applicant and winding up the receivership to which the company had been subjected since February, 1908. The Commission's determination was pursuant to an Opinion of Commissioner Maltbie that the proposed capitalization exceeded the value of the applicant's property and did not entirely represent capital expenditures.

Upon a certiorari proceeding to review the Commission's decision, the Appellate Division of the Supreme Court for the First Department sustained the Commission's action by a decision handed down May 7, 1915, and held that while the Commission was wrong in applying the test of the actual value of the company's property and its earning capacity as a measure of the new securities, it was right in refusing the issue of securities until it was proved that they

represented actual investments for the company's capital account.

On August 3, 1915, the applicant filed a petition for a rehearing, which was granted by the Commission. After further hearings had the Commission entered an Order on May 11, 1916, pursuant to an Opinion of Commissioner Hayward, adopted May 4, 1916, that the application be again denied with leave to file another application for an issue of bonds for \$1,828,385.

On May 25, 1916, the Commission adopted another Opinion of Commissioner Hayward and entered an Order pursuant thereto permitting the applicant to file a petition for the issuance of bonds for \$2,030,000 on account of the discovery of missing records which, the applicant claimed, would justify the increased issue.

The Order entered by the Commission on April 28, 1914, and the Opinions filed March 3, 1914, by Commissioner Williams for and Commissioner Maltbie against the petition, were reported at 5 P. S. C. R. [1st Dist. N. Y.] 213 and 337, respectively.

The decision of the Appellate Division of the Supreme Court, sustaining the Commission, was reported at 6 P. S. C. R. [1st Dist. N. Y.]—Advance Sheet No. 6.

The Order of May 11, 1916, was as follows:

The Dry Dock, East Broadway and Battery Railroad Company, applied to this Commission by petition dated and verified July 31, 1913 for the consent of the Commission to the issue by said company of its refunding mortgage and deed of trust to Central Trust Company of New York as Trustee and to the issue thereunder of about \$560,000 Series B bonds and \$2,240,000 Series C bonds to refund its debts and obligations as in said petition set forth. Ralph J. Jacobs, Frederick H. Ecker and S. Sidney Smith as a Protective Committee for the benefit of holders of the 5% Certificates of Indebtedness of said company made application dated and verified February 19, 1914 to intervene in said proceeding in favor of said petition and such intervention was allowed by the Commission. After a hearing thereon an order was made by the Commission on April 28, 1914 denying the said petition which order was on rehearing confirmed by the Commission by order of December 11, 1914. The Dry Dock, East Broadway and Battery Railroad Company and the said Ralph J. Jacobs and others as said Committee as relators procured from the Supreme Court, New York County, a writ of certiorari to be issued to review the said proceedings and orders of the Commission, and the Appellate Division of the Supreme Court, First Department, thereafter on May 7, 1915 made its order wherein and whereby the said Court dismissed said writ of certiorari and confirmed the said proceedings and orders of the Commission with \$50 costs and disbursements to respondents upon the grounds stated in the opinion of said Court filed May 7, 1915 and without prejudice to the relators or either of them applying to the Commission for a further rehearing in this proceeding. Thereafter the said Dry Dock, East Broadway and Battery Railroad Company and said Ralph J. Jacobs and others as said Committee made application to the Commission by petition dated July 15, 1915 for a further rehearing in this proceeding, which was granted by the Commission, and such further rehear-

ing has been duly held, Herbert J. Bickford appearing for the said Dry Dock, East Broadway and Battery Railroad Company, and Morgan J. O'Brien, Henry M. Ward and Nathan Ottinger appearing for the said Committee.

The Commission having now duly considered the said order and opinion of the Appellate Division of the Supreme Court, First Department, and all the matters and proofs as to this application before the Commission on the original hearing and on the rehearing and on such further rehearing, it is

ORDERED that the application of the said Dry Dock, East Broadway and Battery Railroad Company and of the said Ralph J. Jacobs and others as said Committee, as said application is now presented, for an order authorizing the issuance by said Dry Dock, East Broadway and Battery Railroad Company of \$520,000 Series B bonds and \$2,240,000 Series C bonds be and the same hereby is denied, without prejudice to a new application for an issue of bonds not to exceed \$1,828,385 in such series and for such purposes as the applicants may specify and which the mortgage to be then presented for the consent of the Commission shall provide for.

Order entered May 25, 1916.

It appearing to the Commission that the order of the Commission made and filed herein May 11, 1916 should be changed as hereinafter set forth, it is hereby

ORDERED that said order made and filed herein May 11, 1916 be and the same hereby is changed and amended to read as follows:

The Dry Dock, East Broadway and Battery Railroad Company applied to this Commission by petition dated and verified July 31, 1913 for the consent of the Commission to the issue by said company of its refunding mortgage and deed of trust to Central Trust Company of New York as Trustee and to the issue thereunder of about \$560,000 Series B bonds and \$2,240,000 Series C bonds to refund its debts and obligations as in said petition set forth. Ralph J. Jacobs, Frederick H. Ecker and S. Sidney Smith as a Protective Committee for the benefit of holders of the 5% Certificates of Indebtedness of said company made application dated and verified February 19, 1914 to intervene in said proceeding in favor of said petition and such intervention was allowed by the Commission. After a hearing thereon an order was made by the Commission on April 28, 1914 denying the said petition which order was on rehearing confirmed by the Commission by order of December 11, 1914. The Dry Dock, East Broadway and Battery Railroad Company and the said Ralph J. Jacobs and others as said Committee as relators procured from the Supreme Court, New York County, a writ of certiorari to be issued to review the said proceedings and orders of the Commission, and the Appellate Division of the Supreme Court, First Department, thereafter on May 7, 1915 made its order wherein and whereby the said Court dismissed said writ of certiorari and confirmed the said proceedings and orders of the Commission with \$50 costs and disbursements to respondents upon the grounds stated in the opinion of said Court filed May 7, 1915 and without prejudice to the relators or either of them applying to the Commission for a further rehearing in this proceeding. Thereafter the said Dry Dock, East Broadway and Battery Railroad Company and said Ralph J. Jacobs and others as said Committee made application to the Commission by petition dated July 15, 1915 for a further rehearing in this proceeding, which was granted by the Commission, and such further rehearing has been duly held, Herbert J. Bickford appearing for the said Dry Dock, East Broadway and Battery Railroad Company, and Morgan J. O'Brien, Henry M. Ward and Nathan Ottinger appearing for the said Committee.

The Commission having now duly considered the said order and

opinion of the Appellate Division of the Supreme Court, First Department, and all the matters and proofs as to this application before the Commission on the original hearing and on the rehearing and on such further rehearing, it is

ORDERED that the application of the said Dry Dock, East Broadway and Battery Railroad Company and of the said Ralph J. Jacobs and others as said Committee, as said application is now presented, for an order authorizing the issuance by said Dry Dock, East Broadway and Battery Railroad Company of \$520,000 Series B bonds and \$2,240,000 Series C bonds be and the same hereby is denied, without prejudice to a new application for an issue of bonds not to exceed \$2,030,000 in such series and for such purposes as the applicants may specify and which the mortgage to be then presented for the consent of the Commission shall provide for.

Oliver C. Semple, for the Commission.

Evarts, Choate & Sherman, by *Herbert J. Bickford* and *Morgan J. O'Brien*, *Henry M. Ward* and *Nathan Ottlinger*, for The Dry Dock, East Broadway and Battery Railroad Co.

HAYWARD, Commissioner: The Dry Dock, East Broadway and Battery Railroad Company has applied to this Commission for its consent to the issue of a refunding mortgage providing for the issue of three classes of bonds, payable January 1, 1960 as follows:

Series A bonds 5%	\$1,500,000.
Series B bonds 4%	520,000.
Series C bonds 4% payable only if earned up to January 1, 1925	2,240,000.
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	\$4,240,000.

The Series A bonds are not applied for in this proceeding but when issued will be used to refund the outstanding general mortgage bonds which become due on December 1, 1932, amounting to \$950,000 and to provide for future capital requirements in the amount of \$550,000. The company applies now for permission to issue Series B and Series C bonds in an aggregate amount of \$2,760,000 for the purpose of refunding certain debts of the company amounting to about \$3,800,000.

The original application to the Commission was denied April 28th, 1914 and after rehearing was again denied on December 11th, 1914, both times on the grounds: First, that there was absence of proof that the debts sought to be refunded were incurred for capital as distinct from operating or income charges and that the evidence

showed that some of the debts represented expenditures for operating or income charges; Second, that the company did not have property sufficient in value to support the proposed issues; and Third, that it did not appear that the company would have earnings with which to pay interest on such issues.

The company sued out a writ of certiorari and the Appellate Division (167 App. Div. 286) affirmed the Commission's decision and dismissed the writ with costs.

In the prevailing opinion, Justice Dowling, with whom Justices Clarke and Hotchkiss concurred, discussed at length the grounds upon which the Commission had refused the application, and stated his conclusion as follows (pp. 308-310):

"While, therefore, the Commission was wrong in applying the test of the actual value of the company's property and its earning capacity as a criterion for its approval of the issue of these new securities, it was right in refusing to approve their issue until the relators had proven that the securities sought to be refunded represented actual investments for the company's capital account. * * * There is no presumption that any of the obligations represent such investments. In the absence of such proof or presumption the Commissioners were justified in denying the application. Nor did the relators bring themselves within the exception clause, nor present any facts requiring the Commission to exercise its discretion thereunder.

I, therefore, reach the conclusion that in a refunding case the inquiry of the Commission is properly directed to the following considerations, the evidence requisite to reaching a determination whereupon should be furnished by the petitioner: (1) Whether the proposed issue is reasonably required for the refunding purpose. (2) Whether the expenditure to be refunded is a capital, as distinct from an operating or income charge. (3) If the expenditure to be refunded is an operating or income charge, whether such refunding should, nevertheless, be permitted under the exception clause of the statute which reads: "Except as otherwise permitted in the order in the case of bonds".

The company had claimed on the former hearings, that it was not necessary for it to prove that the securities to be refunded represented capital expenditures and soon after the decision by the

Appellate Division, applied to this Commission for a rehearing so that it might have opportunity to make such proof. Such rehearing was granted and the matter again comes up for decision.

The history of this company naturally divides itself into two periods. The first, from 1864 to 1900, was a period of prosperity, increasing up to 1884 and declining thereafter. During this period the road was entirely a horse railroad. The second period, from 1900 to 1915, was a period of financial disaster, and covers the changes entailed in installing electricity as a motive power.

The securities also naturally divide themselves. During the first period were issued certificates of indebtedness, now totalling \$1,100,000., which were the products of the road's greatest prosperity, and its highest hopes. The unpaid interest on these amounts to \$462,816.67. During the second period receiver's certificates were issued and other indebtedness incurred, all the evidences of which are now owned by the Third Avenue Railway Company. These resulted from the change in motive power and the financial embarrassments of the company, and aggregate \$2,068,086.16. The unpaid interest amounts to \$163,227.00.

It will conduce to clearness, I think, if I examine separately the two periods and their respective securities.

First period (1864-1900) and the Certificates of Indebtedness.

The Dry Dock Company is a domestic railroad corporation created December 8, 1863 under Chapter 140 of the Laws of 1850 to construct, maintain and operate in the County of New York a railroad stated to be of as near as may be sixteen miles in length. It acquired April 1, 1864, by the issue of its total authorized capital stock amounting to \$1,200,000, through assignments from the grantees of the franchise given by Chapter 512 of the Laws of 1860, the portion of the railroad which was then built, consisting of 9.059 miles of single track railroad on the east side of the Borough of Manhattan. The company then bought land and buildings, reconstructed buildings for a depot, acquired horses, cars and the necessary equipment and began the operation of its railroad as a horse railroad June 10, 1864. It proceeded to construct 6.504 miles of single track, making in all 15.563 miles of such track constructed under the 1860 franchise. In 1866 by Chapters 866, 868 and 883 of the Laws of that year, the company acquired additional franchises of which that for the main part of the Grand Street line was the

best, and under these franchises it constructed 5.428 miles of single track railroad, making in all constructed by the company after the original purchase up to 1875, 11.932 miles of single track railroad. The cost of the road so constructed by the company up to 1875 was \$351,049.25 or \$29,400 a mile of single track.

Besides the \$1,200,000 of capital stock the company issued \$855,000 face value of first and second mortgage bonds, of which, later in 1883, it retired \$15,000; from these bond issues it realized in cash \$709,800. In 1892 the \$840,000 of bonds were paid off in full out of the proceeds of the first mortgage dated December, 1892, due in 1932. As a horse railroad the property was prosperous almost from the start. Beginning in 1867, and in every year thereafter except 1868 and 1871, and continuing up to and including 1899, the company paid dividends upon its stock as follows: 1867, 10%; 1869 and 1870, 8%; 1872 to 1876, 8%; 1877, 7%; 1878, 8%; 1879, 9%; 1880 to 1881, 12%; 1882 to 1883, 16%; 1884, 13%; 1885, 10%; 1886, 8%; 1887, 9%; 1888, 7%; 1889, 4%; 1890, 6%; 1891, 8%; 1892, 5%; 1893, 6%; 1894, 2½%; 1895, 4½%; 1896, 6%; 1897, 4½%; 1898, 6%; 1899, 4½%.

In the years beginning 1892 up to 1899, inclusive, there was in each year a deficit after the payment of dividends except that in the following years there was a surplus:

1893	\$133.66
1895	7,695.01
1898	3,594.44

Between the time of the purchase of the partly completed railroad in 1864 up to December 31, 1883 as of which date the first balance sheet obtainable has been found, the book surplus of the company had grown to \$826,899.47. On September 30, 1883, the cost of the road and equipment, physical property, was \$1,295,416.84, and on September 30, 1884 was \$1,476,652.71.

On February 1, 1884 the book surplus of the company was	\$837,589.21
On this date, February 1, 1884, the company increased upon its books the entry for cost of road and equipment by the sum of	362,410.79
stating that it was for cost of road and equipment, account Franchise No. 2, Chapters 866, 868 and 883 of the laws of 1866 obtained subsequent to the original	

franchise, and that said cost had not theretofore been capitalized or placed upon the books of the company

Making \$1,200,000.00

Against this surplus and its increase the company as of that date issued \$1,200,000 described as certificates of indebtedness and gave the same to its stockholders to the amount of their stock dollar for dollar. These certificates were unsecured and by their terms bore six per cent interest payable semi-annually and were redeemable on any interest day without notice. In 1891 \$100,000 of these certificates were paid off and in 1892 the rate of interest was reduced to five per cent, the right to pay off waived and the maturity of the obligation fixed at February 1, 1914. Interest on these certificates was regularly paid up to and including August, 1907.

It does not seem to me that there is any proof in this case that the \$1,100,000 of certificates of indebtedness which it is proposed to refund were issued for property or have at any time been represented by property of that amount. Counsel for the certificate holders claims the following assets as support for the certificates:

Surplus, February 1st, 1884	\$837,589.21
Cost of franchise and equipment No. 2	362,410.79
Increase in value of real estate, say	250,000.00
Net capital expenditures after 1884 to 1900	80,262.67
	<hr/>
	\$1,530,262.67

In adding to the \$837,000 of so-called surplus, February 1st, 1884, \$80,000 of net capital expenditures 1884-1900, the counsel has fallen into error. In 1884 surplus had not at that time been invested in fixed assets but was represented in part by government bonds and liquid assets, a portion but not all of which were subsequently invested in additions to property. But the total additions to property before and after 1884 down to 1900, the period of electrification, were less than the \$837,000 of surplus.

The facts appear to be as follows: From 1864 up to 1884 the cost of road and equipment according to the evidence submitted by the company, was \$1,476,652.71 over and above the \$1,200,000 of stock issued for its original purchase. Of this cost bonds furnished \$840,000, of which \$709,800 was cash and the remainder, \$130,200

was discount. The rest of the \$1,476,652.71, or \$636,652.71 is the amount which appears to have been expended out of income. The balance sheet of the company for September 30, 1884, about which time these certificates seem actually to have been issued, if readjusted so as to eliminate the entries due to their issuance, shows that the book surplus at that date was \$906,307.31 of which only \$636,652.71 had been invested in road and equipment up to that time, the remaining \$269,654.60 being represented by government bonds and other liquid assets. A portion of these liquid assets was used to redeem \$100,000 par value of certificates of indebtedness. Another portion was apparently used to pay dividends later and a third was invested in property. From September 30, 1884 to June 30, 1900, the additions to property, according to the books, aggregated only \$73,308.17 in excess of the additional bonds issued in the same period (total additions, \$183,308.17 less \$110,000 par value of first mortgage bonds), thus making the total investment from surplus earnings \$709,960.88.

Even this amount overstates the actual capital additions, since many items included in the book accounts as capital charges were mere replacements chargeable to operating account under the accounting practices of the time. The 1895 report shows a reduction in the number of cars from 183 to 164, a decrease of 19, but the same report shows an addition to capital account of \$13,000 for 13 new cars at \$1,000 each, less \$1,000 for value of old cars broken up. This would indicate that 32 old cars were broken up and were credited or deducted from capital account at the rate of \$30. per car. The same report, together with the report for 1894, shows as an offsetting entry to the issue of \$35,000 of bonds "New stable building erected". No details concerning this building are given in the report, but the following details were found in the minute book of the corporation and introduced in evidence (page 334):

The president reported the figures for the repair of the damage caused by the recent explosion as follows: Harness, \$550; corn, \$1,000; mason, \$6,936; carpenter, \$9,200; mills, \$2,324; engines, \$6,300; horses, \$6,000; elevator \$700; debris, \$400; car house wheel, \$300; doctor at inquest, \$150; plumbing estimate, \$350; architect, \$800; total, \$35,010".

In other words, bonds were issued to pay for horses, harness, engines, and other replacements that under the company's own

theory of bookkeeping should properly have been charged to the operating account.

The company's books for this period are lacking so that no exact estimate can be made as to the reliability of the figures presented in their annual reports. But the above items, together with numerous other similar items lead to the inevitable conclusion that we would be treating the company with extreme liberality if we decided that the company had spent for road and equipment approximately \$710,000.00 out of income.

But if this liberal figure is allowed, we must also take into account the fact that the company during this period kept no depreciation reserve. This they attempt to justify by the fact that the system of accounts recommended by the State Board of Railroad Commissioners in 1900 did not provide specifically for a depreciation reserve. No doubt that was a serious omission, but has little bearing when we consider the fact that the original Railroad Law of 1850, under which the Dry Dock Company began to operate, made distinct provision for the setting aside of income to meet depreciation. Section 31 of Chapter 140 of the Laws of 1850, being the general railroad law, provided as follows:

"Every railroad corporation formed under this act shall make an annual report to the State Engineer and Surveyor of the operations of the year ending on the 30th of September, which report shall be verified by * * * and shall state:

Expenses of Maintaining the Road and Real Estate of the Corporation

- 56. For repairs of roadbed and railway.....
- 57. For depreciation of way
-
- 64. Repairs of engines and tenders
- 65. Depreciation of engines and tenders
- 66. Repairs of passenger and baggage cars
- 67. Depreciation of passenger and baggage cars
- 68. Repairs of freight cars
- 69. Depreciation of freight cars."

The argument based on the rules of 1900 is therefore beside the point. The accounting rules of 1850 as well as those of today recognize the necessity of a depreciation reserve and universal custom and common sense approve those rules. It is sound doctrine based on

the unassailable proposition that the wasting of physical property must be provided against out of income. Most companies, even if they did not carry a reserve earmarked as "depreciation" directly or indirectly made provision for the depreciation of their property through an accumulated surplus. This surplus was usually invested in additions to property and thus protected the original investment. Such was the practice of this company up to 1884, when the climax was reached of a remarkable period of prosperity. It had a surplus invested in property and available for depreciation purposes, but stockholders were not satisfied with 16% dividends and managed to obtain something better than a stock dividend, i. e., \$1,200,000 of certificates of indebtedness. The transaction was in effect a distribution of a depreciation fund and necessarily impaired the capital of the company to the extent that it drew upon such depreciation reserve. To what extent such a reserve was drawn upon, is, of course, difficult to determine on the meagre evidence before us. It seems reasonable to assume, however, that the depreciation of the horse railroad after twenty years of operation in 1884, was not proportionately less than the depreciation of the more substantial electric railroad after less than fifteen years use in 1915.

As of August 1, 1915, the cost to reproduce new the physical property of the company was \$3,279,870. the present value \$2,383,069, and the accrued depreciation \$896,801 or 27½% of the cost to reproduce. The best calculation of the cost to reproduce the horse property in 1884 is \$1,742,652.71, obtained by adding to the claimed capital additions from 1864 to 1884, amounting to \$1,476,652.71, the estimated value, \$266,000, of the property acquired by the original issue of stock. This latter sum is calculated, in default of exact figures as to this original cost, by assuming that the 9.059 miles of single track originally purchased were constructed at the same cost as the 11.932 miles constructed between 1864 and 1875, or \$29,400 per mile. Upon this sum of \$1,742,652.71, depreciation calculated at 27½% would amount to \$479,229.50.

The certificate holders claim appreciation of real estate from 1864 to 1915 in the sum of \$250,000, and state, without substantiating the statement, that the appreciation must have been as great in 1884. If we allow this, and offset this appreciation against the estimated depreciation reserve, we have a net depreciation fund of \$229,229.50, which was represented by investment in property in 1884 and which formed part of the amount claimed as a basis of

these certificates of indebtedness. Deducting this estimated fund from the \$710,000 of income spent on road and equipment, we have net capital expenditures from income of approximately \$481,000, instead of \$837,589.21 as claimed.

For the item "Cost of franchise and equipment No. 2—\$362,410.79," I do not see how any allowance can be made. There is not one word of proof that this or any other amount was actually paid for this franchise, either to the state or to any individuals. In fact, the evidence is conclusive that this was a pure balancing item and might as readily have been \$2,362,410.79, if the company had desired to issue an additional \$2,000,000 of engraved paper. It was not in any sense a capital expenditure or an actual investment for capital purposes.

I therefore conclude that of the \$1,100,000 of certificates of indebtedness, not more than \$481,000 ever represented capital expenditures.

Second Period (1900 to 1915). The Receiver's Certificates and the Third Avenue Indebtedness.

I.

On August 27, 1897, substantially all the stock of the Dry Dock Company, \$1,128,700 out of \$1,200,000 was purchased by the Third Avenue Railroad Company at about \$225. a share. This stock was included in the mortgage made by the Third Avenue Railroad Company, May 15, 1900, and subject to that mortgage this stock was sold first to the Metropolitan Street Railway Company under the Third Avenue lease of April 13, 1900 and later on, February 14, 1902, was sold by the Metropolitan Company to the Interurban Street Railway Company under the lease of that date. The name of this Interurban Street Railway Company was later changed to New York City Railway Company.

II.

A short time previous to 1895 there was in New York City a general improvement of horse car lines, first by cable, as on the Broadway Line of the Metropolitan Company and on the Third Avenue Line of the Third Avenue Railroad Company. Subsequently the cable was removed and the system of underground electric trolley substituted. These changes were for the general

improvement of the service and economy of operation, to enable the running of larger cars, to run cars more frequently and to bring better conditions so far as the public was concerned. The horse car lines that came in competition with these improved systems became unprofitable and the service unsatisfactory. From 1900 on, the underground electric system was conceded to be the best system of operation of street surface lines in the principal streets of the City of New York.

III.

The mortgage of the Third Avenue Railroad Company of May 15, 1900, subject to which the stock of the Dry Dock Company came to the Metropolitan Company, provided that the proceeds of the \$50,000,000 of bonds thereby secured were to be used among other things for improvements in and additions to, or extensions of the property of the controlled companies of the Third Avenue Railroad Company and prohibited the creation of any debt of controlled companies (except operating expenses) unless the evidences thereof were received by the Third Avenue Company and pledged with the trustee under the mortgage. The Dry Dock Company was one of these controlled companies. At the time of this mortgage the Dry Dock Company's lines were wholly operated by horse cars. As of June 30, 1900 the books and reports of the Dry Dock Company show that its total charges to fixed capital as of that date were \$3,222,371.67 divided as follows:

Right of way	\$1,562,410.79
Real Estate and buildings used in the operation of the road	872,917.57
Track and right of way construction ..	358,779.28
Shop tools and machinery	27,963.07
Cars	191,330.00
Miscellaneous equipment (Horses, harness, wagons, etc.).....	208,970.96
<hr/>	
Total	\$3,222,371.67

IV.

Between 1900 and 1915 changes were made on the Dry Dock Company's properties necessary to the operation of these lines by

electricity. Certain lines were electrified for operation by the underground electric system, barns were rebuilt and equipped for use by both electric and horse cars and later for storage battery cars. The horse cars and horses and the harnesses, wagons, shop tools and machinery for the same were wholly done away with and discarded. Some of this construction work and other expenditures in the tearing out of the old roadway and buildings and the substitution of new roadway construction, new buildings, new cars and new electrical equipment for the operation of the cars were mere replacement of old and obsolete plant.

Between 1900 and February 1908 part of the work of electrification of the Dry Dock properties was done by the Metropolitan Company, part by the New York City Railway Company and part by the Dry Dock Company itself. The moneys for the work were supplied by the Third Avenue Railroad Company, the Metropolitan Company and the New York City Company. Under the terms of the Third Avenue mortgage of May 15, 1900 the Third Avenue Railway Company acquired the claims of the Metropolitan and New York City Railway Companies against the Dry Dock Company for moneys expended or advanced by them and on or about April 30, 1907 the Dry Dock Company made and delivered its note for \$1,822,963.70 for the amount of these claims and the amount advanced by the Third Avenue Railroad Company itself for this purpose. On September 27, 1907 the New York City Company went into the hands of receivers and a few days later the receivership was extended to the Metropolitan Company. On January 6, 1908 Frederick W. Whitridge was appointed receiver of the Third Avenue Railroad Company in a suit to foreclose the Third Avenue mortgage. On February 1, 1908 he was appointed receiver of the Dry Dock Company in a suit brought by several creditors in the United States Circuit Court. In this suit the Dry Dock Company was adjudged to be insolvent, and Mr. Whitridge has since continued to be and is now the receiver of the Dry Dock Company.

The receiver, Mr. Whitridge, in taking possession of the Dry Dock properties, found that the Dry Dock Company had been stripped of almost everything movable. He could find but 224 horses, 35 passenger cars, 5 service cars and a few sets of harness, whereas in 1899, just before the Metropolitan Company acquired control, the company had had 1059 horses and 166 cars which

were carried in capital account at respectively \$183,665.96 and \$191,330. The receiver accordingly applied to the court for authority to purchase 50 cars to be operated by storage battery and to make alterations in track and car barns and other property of the Dry Dock Company necessary for the operation of these cars and to procure consents of public authorities and others as might be necessary to enable him to operate such cars in place of horse cars on certain lines of the Dry Dock Company. By orders of April 22, 1911 and July 18, 1913, the court authorized the receiver to borrow money for these purposes and to issue receiver's certificates therefor to the amount of \$499,000. Certificates to the amount of \$480,000 were issued and they have been acquired and are now owned by the Third Avenue Railway Company.

In the suit in the United States Circuit Court against the Dry Dock Company in which it was adjudged insolvent and in which the receiver was appointed, the claims of the holders of the certificates of indebtedness of February 1, 1884 were prosecuted and the same were allowed October 8, 1912 as valid claims, principal and interest, to the amount of \$1,127,295. In the same suit the claim of the Third Avenue Railway Company on the note of April 30, 1907 for \$1,822,963.70 was prosecuted and allowed July 8, 1913 as a valid claim in the sum of \$1,500,000.

V.

The expenditures in the electrification of the Dry Dock properties between 1900 and April 30, 1907 out of moneys supplied by the Third Avenue Railroad Company, the Metropolitan Company and the New York City Company amount to\$1,618,549.89

The expenditures between February 1, 1908 and June

30, 1915 for the same purpose by the receiver out

of receiver's certificates amount to..... 439,259.89

Making in all expenditures for the period\$2,057,809.78

Out of this amount there should have been charged to operating expenses as being replacement of horse railroad plant and property discarded the following items previously in fixed capital June 30, 1900:

Cars	\$191,330.00
Miscellaneous equipment consisting of Horses, harness and wagons	208,970.96
Shop tools and machinery	27,963.07
Track and roadway, 6.29 miles at \$29,400 a mile	184,926.00
Buildings (Including tracks)	97,234.00
	<hr/>
	\$710,424.03

leaving \$1,347,385.75 representing the sum of expenditures for capital purposes since 1900 in the electrification and improvement of the properties of the Dry Dock Company.

VI.

In addition to the foregoing claims the Third Avenue Railway Company by payment of the sum of \$88,086.16 has acquired all claims against the Dry Dock Company except certain small unpaid claims to the amount of \$533.50. The claims so acquired are tort claims, supply claims and claims against the company for paying which the Dry Dock Company was under obligation to do, all of the same being survivals of operating obligations and not capital charges.

VII.

On December 31, 1912 by a judgment in an action by the People against the Dry Dock Company portions of the franchise of that company were forfeited, viz:

- (1) Under the franchise of 1860:

as to track constructed	2.27	miles
as to track not constructed	3.18	"
- (2) Under the franchise of 1866:

as to track constructed .....	.74	"
	<hr/>	
	6.19	"

As of August 1, 1915 cost to reproduce new the physical properties of the Dry Dock Company was \$3,279,870. the present value was \$2,383,069. and the accrued depreciation was \$896,801.

The net corporate income or loss obtained after deducting operating expenses and taxes and the deductions for interest, rents and depreciation accruing in each year from 1910 to 1915, inclusive, are as follows:

Years Ended June 30

Net corporate income or loss
(Loss represented by capital D)

1910	.....	\$37,491.09
1911	..... D	8,224.90
1912	..... D	74,617.95
1913	.....	21,978.08
1914	..... D	67,270.03
1915	..... D	68,850.94

Stated in another way, the surplus from the operation of the company's properties over and above operating expenses, taxes, rent, etc., being the amount available for the payment of interest upon its obligations was for the years stated as follows:

Years Ended June 30

1910	.....	\$84,991.09
1911	.....	39,275.10
1912	..... D	17,414.54
1913	.....	87,040.58
1914	.....	6,124.83
1915	.....	4,849.06

The interest on the first mortgage \$950,000 of bonds outstanding amounts to \$47,500. in each year.

SUMMARY OF THE FACTS AND THE NATURE AND PURPOSE OF THE
PRESENT APPLICATION

The Dry Dock Company is insolvent and in the hands of a receiver and has been so for eight years. The earnings of its properties after operating expenses, rentals and provision for annual depreciation is taken out are less than the interest on its present \$950,000 of first mortgage bonds. More than six miles of its franchise and over four miles of constructed track has been forfeited. Its property other than franchises, that is to say, its physical plant and property if reproduced new would be worth \$3,280,000; by reason of \$900,000 accrued depreciation it is worth now \$2,380,000. The company has no cash or reserve funds of any kind to make up this depreciation chargeable to past income.

Against its franchises chiefly it has issued its capital stock to the amount of _____ \$1,200,000.

Against its physical property of the present value of \$2,380,000, there is first to be charged its first mortgage of _____ 950,000.

After deducting which there is left of its physical properties \$1,430,000, against which there stand liabilities which are the subject of this application, some of which were incurred partly for capital and partly for operating purposes and some for operating purposes exclusively.

They are as follows:

(1) Partly for capital and partly for operating purposes:

(a) Certificates of indebtedness owing to the holders thereof, of which amount we have seen that not more than \$481,000 can be allowed as a capital expenditure _____	\$1,100,000.00
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(b) Receivers' certificates owing to Third Avenue Railway Company _____	\$480,000
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(c) Third Avenue note allowed by the special master in the Federal Court and owing to Third Avenue Railway Company _____	1,500,000
--	-----------

\$1,980,000 \$1,980,000.00

of which amount it has been shown \$1,347,385 represents capital expenditures and the balance \$632,615 replacements, an operating or income charge, making a total representing capital expenditures of \$1,828,385.

(2) Exclusively operating purposes as follows:

(a) Interest on certificates of Indebtedness from August 1907 to December 31, 1915, owing to the certificate holders _____	462,816.67
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(b) Interest on Third Avenue note as allowed by the Master from its allowance of \$1,500,000 on July 8, 1913 _____	163,227.00
--	------------

(c) Paving claims, tort and supply claims against the Dry Dock Company acquired by Third Avenue Railway Company at the amount paid for the same and owing to Third Avenue Railway Company	\$88,086.16
Total	\$3,794,129.83

Of these, as I have said, not more than \$1,828,385 ever represented capital expenditures.

All these claims are owing to the Third Avenue Railway Company except the certificates of indebtedness and the interest thereon. It is proposed now to cancel all these claims and give to the Third Avenue Railway Company for its claims:

Series B bonds to the amount of _____	\$520,000.
“ C “ “ “ “ “ _____	1,140,000.

and to give to the certificate holders for the certificates of indebtedness, etc.

Series C bonds to the amount of _____	1,100,000.
	\$2,760,000.

The Series B bonds are to bear interest from date of issue at 4% per annum and to be a prior lien and be preferred both as to principal and interest over the Series C bonds. The Series C bonds until July, 1925 are to bear interest at 4% only if earned, thereafter at the fixed rate.

The present application requests the Commission to consent to the issue of these bonds for these purposes.

If the Dry Dock Company were an ordinary mercantile or business organization, a composition of its debts by which the amount was so reduced and the maturity deferred for a period of fifty years and in pursuance of which the receiver was to be discharged and the company reinvested with its property might be a good business move. In any case the state would have no interest or hand in the matter. The mere existence of the overdue debts, creditors all consenting, would be enough to justify the issue of new obligations. In the case however of railroad corporations the state has intervened in the interest of the investing public, and has decreed that the rights of the company and the duties of the Commission shall be as follows:

"A common carrier, railroad corporation or street railroad corporation organized or existing, or hereafter incorporated, under or by virtue of the laws of the State of New York, may issue stocks, bonds, notes or other evidence of indebtedness payable at periods of more than twelve months after the date thereof, when necessary for the acquisition of property, the construction, completion, extension or improvement of its facilities, or for the improvement or maintenance of its service or for the discharge or lawful refunding of its obligations, or for the reimbursement of moneys actually expended from income * * * within five years next prior to the filing of an application with the proper commission for the required authorization, for any of the aforesaid purposes except maintenance of service and except replacements * * * provided and not otherwise that there shall have been secured from the proper commission an order authorizing such issue, and the amount thereof and stating the purposes to which the issue or proceeds thereof are to be applied, and that, in the opinion of the Commission, the money, property or labor to be procured or paid for by the issue of such stock, bonds, notes or other evidence of indebtedness is or has been reasonably required for the purposes specified in the order, and that, except as otherwise permitted in the order, in the case of bonds, notes and other evidence of indebtedness, such purposes are not in whole or in part reasonably chargeable to operating expenses or to income * * * ".

(Section 55, Public Service Law).

This is not a grant of power to railroad corporations to issue stock or bonds. It is a limitation as to railroad corporations upon powers elsewhere given to all corporations. Stock and bonds which have more than one year to run cannot in the case of railroad corporations be issued unless the Commission in authorizing the issue shall state in its order:

(1) The purposes to which the issue or proceeds thereof are to be applied, and

(2) That, in the opinion of the Commission, the money, property or labor to be procured or paid for by the issue of such * * * bonds is or has been reasonably required for the purposes specified in the order, and

(3) That except as otherwise permitted in the order in the case of bonds, * * * such purposes are not, in whole or in part, reasonably chargeable to operating expenses or to income.

The construction which this statute should bear in a refunding case has been stated by the court in the words above quoted (167 A. D. 286) as follows:

"While, therefore, the Commission was wrong in the applying the test of the actual value of the company's property and its earning capacity as a criterion for its approval of the issue of these new securities, it was right in refusing to approve their issue until the relators had proven that the securities sought to be refunded represent actual investments for the company's capital account * * *. There is no presumption that any of the obligations represent such investments. In the absence of such proof or presumption the commissioners were justified in denying the application. Nor did the relators bring themselves within the exception clause, nor present any facts requiring the Commission to exercise its discretion thereunder.

I, therefore, reach the conclusion that in a refunding case the inquiry of the Commission is properly directed to the following considerations, the evidence requisite to reaching a determination whereupon should be furnished by the petitioner: (1) Whether the proposed issue is reasonably required for the refunding purpose; (2) whether the expenditure to be refunded is a capital as distinct from an operating or income charge; (3) if the expenditure to be refunded is an operating or income charge, whether such refunding should nevertheless be permitted under the exception clause of the statute which reads 'except as otherwise permitted in the order in the case of bonds.'"

Since the reasonable necessity for such an issue as is applied for here depends to a great extent upon the answers to questions (2) and (3) propounded by the court we can profitably turn to those questions in their order.

We have already examined the facts in their bearing upon question (2), "Whether the expenditures to be refunded are capital as distinct from operating or income charges," or, as the court also expresses it, "whether the securities to be refunded represented actual investment for the company's capital account." We have

ascertained in that examination that the following securities represented such investments.

Certificates of indebtedness not more than _____	\$481,000
Third Avenue claim on note and receiver's certificates to the amount of _____	1,347,385
Total	<u>\$1,828,385.</u>

The issues applied for under the refunding plan are as follows:

The Third Avenue Company is to be given priority over the certificates of indebtedness to the extent of its Series B bonds _____	520,000.
And is to take Series C bonds to the amount of _____	1,140,000.
while the certificates of indebtedness are to take Series C bonds to the amount of _____	1,100,000.
	<u>\$2,760,000.</u>

It seems, therefore, that under the decision of the Appellate Division the Commission must find that the following bonds referred to in the application are not chargeable to operating expenses or to income, viz.:

Series B bonds _____	\$520,000.
Series C bonds _____	1,308,385.
Total	<u>\$1,828,385.</u>

The final question (3) is whether the discretion of the Commission should be exercised under the statute to allow the rest of the Series C bonds amounting to \$931,615 for the refunding of these debts even though the Commission cannot certify that the amount is not chargeable to operating expenses or to income. The applicants contend that on the facts presented the Commission should exercise its discretion and allow this issue.

There are reasons which appeal to the discretion of the Commission as to the issue of Series C bonds, both as to so much thereof as goes to the holders of the certificates of indebtedness and to the Third Avenue Railway Company. The certificates were issued many years ago. They have been bought in good faith and are widely held and the interest thereon was paid for twenty-

three years. The expenditures by the Third Avenue Company and its receiver upon the electrification of the properties were necessary and were made in part under circumstances of emergency which invite special consideration. The failure of the company in its early prosperous years to put aside funds from its revenues to provide for necessary changes in its property was not an isolated case, and the failure in more recent years to take care from income of the replacements and depreciation may have been due to a want of earnings with which to do it.

All of these circumstances appeal most strongly to our sympathies and urge us to grant the petitioners relief. But our feelings must not be the basis of our actions. Sympathy for those who have been misguided and wronged in the past is too apt to lead us into betraying the investors of the future. And it is the investors of the future that we are bound to protect. It is our duty to see to it that they do not by any act of ours fall victims to a perpetuation or a repetition of the thoughtless and unprincipled financial methods which have brought discredit and ruin upon so many of our public utilities.

The main thing to be considered in the exercise of this discretion is whether or not the bonds to be issued for operating expenditures may be amortized out of income. Fifty year bonds for past operating charges ought not ordinarily to be allowed and if allowed, they should be retired out of the revenues of the company as soon as may be. In the present case there is no chance that the bonds can be amortized and retired and small chance that any interest can be earned or paid on the Series C bonds. We are therefore of the opinion that notwithstanding the special reasons in this case which appeal most strongly to our sympathies, we should not exercise our discretion to allow this issue at the present time.

Under the decision of the Appellate Division, therefore, I believe that the application for the issuance of bonds should be denied without prejudice to a new application for an issue of bonds not to exceed \$1,828,385, in such series and for such purposes as the applicants may specify, and which the mortgage to be then presented for the consent of the Commission, may provide for.

The court's decision, although it affirmed the Commission's previous decision denying the company's application, held that "The Commission was wrong in applying the test of the actual value of

the company's property and its earning capacity as a criterion for its approval of the issue of these new securities". Counsel for the Commission argued with commendable zeal and considerable force that inasmuch as the Commission's original decision had been affirmed, this ruling of the Appellate Division was obiter dicta and is not binding upon us. Weight is given to this argument by the fact that the affirmance of our previous decision makes it impossible for us to appeal from this ruling to the court of last resort. This is extremely unfortunate since the question involved is of the utmost importance in the decision of future applications for refunding issues.

One of the broad underlying purposes of the Public Service Commissions Law was to insure against over-capitalization, and it has always been the proud boast of this Commission that securities would not be authorized beyond the value of the property subject to them, or under such circumstances that it could not reasonably be anticipated that the interest thereon would be paid. The decision of the Appellate Division however held that in the case, at least, of refunding securities, the value of the company's property and its ability to pay interest upon the proposed issues could not be considered by the Commission. Under that decision, therefore, the purpose of the Public Service Commissions Law in this respect might very well be frustrated and refunding bonds insufficiently secured might very well be issued with the approval of this Commission stamped upon them to hasten them into the hands of the unwary investor.

These considerations urged me to accept the theory propounded by our counsel in the hope that this most important question might be finally decided by the Court of Appeals, but a thorough review of the matter and of the terms of the Appellate Division's decision bring me to the conclusion that we are bound by that decision in all its aspects. The Court did not decide these questions in a casual manner, but discussed them most fully and laid down rules which are practically mandatory upon this Commission in form and content. I have therefore followed the Appellate Division's decision in my examination of the question before us, and hopefully await an amendment of the law or a change of judicial interpretation which will cure what seems to me to be a serious defect.

(STRAUS, *Chairman*, HODGE and WHITNEY, *Commissioners*, concurring; HERVEY, *Commissioner*, absent.)

HAYWARD, *Commissioner*: The attorneys for the company and for the certificate holders have asked that they be allowed to apply for additional bonds, to which they claim they are entitled, under their accounting theory, of the facts found.

Without passing on their claim I believe there is no objection to allowing them to apply for an additional amount, particularly as they have found certain books heretofore missing, which may shed some light on the matter.

The additional amount claimed is about \$200,000 and I recommend that the order in this case be modified so as to increase the amount of bonds for which they may apply from \$1,828,385, as now fixed, to \$2,030,000.

(STRAUS, *Chairman*, HODGE, WHITNEY and HERVEY, *Commissioners*, concurring).

In the Matter of the Application of THE BROOKLYN EASTERN DISTRICT TERMINAL (Incorporated November 4, 1915, as a Freight Terminal Company) for Permission to Issue Stock and to Acquire and Hold the Stock of The Brooklyn Eastern District Terminal (Incorporated June 22, 1906, as a Navigation Corporation) and the EAST RIVER TERMINAL RAILROAD, and Thereupon to Merge said Corporations; Also for Permission under Section 53 of the Public Service Commissions Law to Exercise its Franchise, Privileges and Rights under the Provisions of Article 10-a of the Transportation Corporations Law, and the Franchises, Privileges and Rights Now Held by The Brooklyn Eastern District Terminal (Incorporated June 22, 1906), and the East River Terminal Railroad.

CASE NO. 2044

Statutes—Construction of Provisions—Intent of Legislature Controlling.—Doubtful and obscure phrases and imperfect language in the statute are to be so interpreted as to give effect to the presumed intention of the legislature.

Consolidations and Mergers—Freight Terminal Corporations—Merger of R. R. Corporation with Terminal Corporation Approved.—Upon an application by The B. E. D. T., a freight terminal company, for the approval of the acquisition of stock and the merger of The B. E. D. T.,

a navigation company, and the E. R. T. R. R., a railroad company, under section 157-b of the Freight Terminal Act (Article 10-a of the Transportation Corporations Law) it was contended that the merger of the railroad company could not be effected because under section 54 of the P. S. C. L. not more than 10 per cent of its stock could be acquired by the applicant. HELD,—that the Freight Terminal Act was enacted to permit of the incorporation of one single company which would have all the broad powers necessary for the operation of a modern terminal property and of the merger of any existing company organized for the purpose of carrying on any business included within that which a freight terminal company might carry on, and that as the railroad company herein had been formed for such a purpose and its business could be carried on by the applicant, the application will be granted.

Consolidations and Mergers—Freight Terminal Corporations—Consent of Commission Required—Section 54 of P. S. C. L. Construed.—Section 54 of the P. S. C. L., which was enacted to prohibit the abuse of stock control of public utilities by holding companies not subject to Commission regulation, is not preventive of the acquisition of stock of a railroad company by a freight terminal company which, under section 157-b of the Freight Terminal Act, requires the approval of the Commission.

Consolidations and Mergers—Freight Terminal Corporations—Section 149 of the R. R. L. Construed.—Section 149 of the Railroad Law providing for the merger of a lessee with a lessor railroad company, and making no reference to other corporations, is not operative to prevent the merger of a railroad company with a freight terminal company under section 157-b of the Freight Terminal Act.

Corporate Names—Freight Terminal Corporations—Irregularity in Corporate Name Cured Upon Merger.—An omission of the words "Freight Terminal Company" from the name of a company incorporated under the Freight Terminal Act (Article 10-a of the Transportation Corporations Law) is an irregularity cured upon the merger therewith of a navigation company of the same name under section 6 of the General Corporation Law which is applicable to all corporations.

Corporate Names—Companies with Similar Names—Incorporation of Company with Name Similar to Company Thereafter Merged with it not Irregular.—A determination by the Secretary of State that the provisions of a statute prohibiting the incorporation of a company with a name similar to that of an existing company do not apply to a company incorporated with the consent of such other company whose assets and business it intends to acquire if a statement thereof appears in the certificate of incorporation, should not be disturbed by the mere technical objection that the applicant should have been incorporated under another name before it merged its predecessor B. E. D. T. and assumed the name thereof.

Hearings closed January 10, 1916. Opinion adopted May 15, 1916.

This proceeding was started by a Resolution adopted on December 7, 1915, directing a hearing upon the application of The Brooklyn Eastern District Terminal for the approval of the acquisition of stock and merger of a navigation company of the same name and of the East River Terminal Railroad, and for permission to exercise the franchises of said corporations.

After hearings had the Commission, on May 15, 1916, entered an Order, pursuant to an Opinion of Commissioner Hayward adopted on that day, granting the application of the company. Both the Order and the Opinion of the Commission are set out in full below.

The further facts in the matter are set forth in the Opinion adopted.

Application having been made to this Commission by the Brooklyn Eastern District Terminal (incorporated November 4, 1915 as a freight terminal company) for permission to purchase, acquire, take and hold all the outstanding capital stock of the Brooklyn Eastern District Terminal (incorporated June 22, 1906 as a navigation corporation) and all the outstanding capital stock of the East River Terminal Railroad (a railroad corporation), the stock of said corporations amounting to \$110,000 par value, and to issue in exchange therefor \$110,000 par value of the stock of the new company, and thereupon to merge the corporations whose stock shall have been so acquired; also for permission under Section 53 of the Public Service Commissions Law to exercise its franchises, privileges and rights under the provisions of Article 10-a of the Transportation Corporations Law, and the franchises, privileges and rights now held by the Brooklyn Eastern District Terminal (incorporated June 22, 1906,) and the East River Terminal Railroad; and a hearing having been duly had by and before the Commission upon said application on December 20, 1915 and January 3 and January 10, 1916, Parsons, Closson & McIlvaine appearing in support of said application, and John T. McDonough appearing in opposition thereto, and Lamar Hardy, Corporation Counsel, by William J. Clarke, Assistant Corporation Counsel, appearing for The City of New York; and the Commission being of the opinion after said hearing that said application should be granted;

ORDERED,

(1) That the Brooklyn Eastern District Terminal (incorporated November 4, 1915 as a freight terminal company) be and it hereby is permitted to purchase, acquire, take and hold all the outstanding capital stock of the Brooklyn Eastern District Terminal (incorporated June 22, 1906 as a navigation corporation) and all the outstanding capital stock of the East River Terminal Railroad (a railroad corporation), the stock of said corporations amounting to \$110,000 par value, and to issue in exchange therefor \$110,000 par value of the stock of the new company, and thereupon to merge the corporations whose stock shall have been so acquired.

(2) That the Brooklyn Eastern District Terminal (incorporated November 4, 1915 as a freight terminal company) be and it is hereby permitted under Section 53 of the Public Service Commissions Law to exercise all its franchises, privileges and rights under the provisions of Article 10-a of the Transportation Corporations Law, and the franchises, privileges and rights now held by the Brooklyn Eastern District Terminal (incorporated June 22, 1906) and the East River Terminal Railroad.

(3) That this order shall take effect June 1, 1916.

H. M. Chamberlain, for the Commission.

Lamar Hardy, by *W. J. Clarke*, for the City of New York.

Henry F. Cochran and *Henry B. Closson*, for the petitioners.

John Fitzgibbons, for the Brotherhood of Railroad Trainmen of New York State.

Morris D. Young, for the Brooklyn Central Labor Union and the 28th Ward Taxpayers' Association.

P. Caughlan, for the Brooklyn Central Labor Union.

Dr. F. C. Mack, for the 28th Ward Taxpayers' Association.

H. J. Edgar, for the Brotherhood of Railroad Trainmen of Brooklyn and vicinity.

HAYWARD, Commissioner: There are three companies involved in this application. The petitioner is alleged to be a freight terminal company incorporated under Article 10-A of the Transportation Corporations Law (added by Laws 1911, Chapter 778) and will hereafter be referred to as the "Freight Terminal Company." The Brooklyn Eastern District Terminal is a navigation company organized under the Transportation Corporations Law, and will hereafter be referred to as the "Navigation Company." The East River Terminal Railroad is a railroad corporation organized under the Railroad Law, and will hereafter be referred to as the "Railroad Company."

The Freight Terminal Company applies:

- (1) For permission to acquire all the capital stock of the Navigation Company and of the Railroad Company.
- (2) For permission to merge the Navigation Company and the Railroad Company with the Freight Terminal Company upon the acquisition of such stock.
- (3) For a certificate of Convenience and Necessity under Section 53 of the Public Service Commissions Law.

The Navigation Company was organized in 1906 and since then has operated under lease an extensive freight terminal station in the Borough of Brooklyn fronting on the East River and extending back to Kent and Wythe Avenues and Berry Streets on the east, North 10th Street on the north, and North 3rd Street on the south. During the year 1914 the terminal handled over half a million tons of westbound, and a like quantity of eastbound, freight for over twelve hundred shippers and fourteen hundred consignees. For the purpose of moving freight cars to and from the various receiving platforms, an extensive system of switching tracks is maintained

and operated. The evidence shows the terminal to be an important and integral part of the manufacturing and commercial district surrounding it.

In 1909 the terminal station was extended to meet increasing business and application was made to the Board of Estimate and Apportionment for permission to construct and operate switching tracks between North 3rd and North 4th Streets and across Kent and Wythe Avenues. On being advised that such franchise could be granted only to a railroad company, the parties in interest caused the East River Terminal Railroad ("The Railroad Company") to be incorporated under the Railroad Law. A certificate of Convenience and Necessity was in due course granted to the Railroad Company by this Commission and the desired franchise was obtained from the Board of Estimate. The switching tracks were then constructed and leased to the Railroad Company, which has ever since operated them in conjunction with the Navigation Company and as a part of the freight terminal station.

Upon the application for a franchise made to the Board of Estimate prior to the incorporation of the Railroad Company, it appeared that the right to operate the tracks then being operated as a part of the terminal station on North 5th to North 9th Streets and across Kent and Wythe Avenues was not at all clear, and thereafter an opinion was rendered by the Corporation Counsel to the effect that the firm who originally laid the tracks never had a right to do so, and that the right to use them could not be gained by prescription. He advised that application to continue such user should be made in due form to the Board of Estimate by a corporation enjoying the franchise power to receive the consent of the City. Acting upon such advice an application was made by the Railroad Company for the right to construct such tracks as an extension of its existing railroad and such right was duly granted by the Board of Estimate by a contract dated December 27, 1909. Thereupon an application was made to this Commission for a Certificate of Convenience and Necessity under Section 53 of the Public Service Commissions Law, but that application was informally denied upon the ground that it did not appear that the Railroad Company had amended its certificate of incorporation to cover the extension of its tracks north of North 4th Street. It is claimed that such an amendment can not be had because of the limitation as to the width of the road in sub-division 3 of Section 8 of the Railroad Law to

six rods, whereas the extension proposed would have a width of nearly seven city blocks along the water front. The application for the certificate was not pressed, and as a matter of fact the Navigation Company is still operating tracks north of North 4th Street.

To terminate the alleged illegal maintenance and operation of the tracks and to provide a corporation which can operate all the tracks in connection with the terminal, the petitioner was incorporated under Article 10-A of the Transportation Corporations Law by certificate of incorporation filed November 4, 1915. Thereupon this application was promptly made.

Three objections have been raised to the granting of the relief prayed for:

First, that pursuant to the provisions of Section 54 of the Public Service Commissions Law, the Freight Terminal Company can not acquire more than ten per cent. of the capital stock of the Railroad Company because the petitioner is not itself a Railroad Company, and that therefore it can not merge the Railroad Company;

Second, that pursuant to Section 149 of the Railroad Law, the Freight Terminal Company can not merge the Railroad Company because the latter company is not leased by the former;

Third, that the Freight Terminal Company is not a corporation de jure or de facto because its corporate name does not contain the words "freight terminal company" as required by Section 154 of the Freight Terminal Act and because said name does not clearly indicate that it is a corporation as distinct from a natural person, firm, or co-partnership, and is the same as that of an existing corporation in violation of the requirements of Section 6 of the General Corporation Law.

These objections require careful consideration.

FIRST: It will be well to set forth the various statutory provisions which must be considered in determining the validity of the objections made. Article 10-A of the Transportation Corporations Law was added by Laws 1911, Chapter 778. Section 157-B provides:

"Any two or more corporations organized under this article or any general or special law of the state for the purpose of

carrying on any business included within that which a corporation organized under this article might carry on may consolidate themselves into a single corporation, and any corporation organized under this article may, with the like permission or approval, be merged with any other such corporation upon complying with the provisions of the business corporations law relating to the consolidation of business corporations and the stock corporations law relating to the merger of stock corporations.

" But no freight terminal company or any corporation with which such company shall have been consolidated or merged shall undertake any business not included in the objects for which such freight terminal companies may be incorporated as set forth in this article; and no such freight terminal company shall purchase, acquire, or hold the stocks, bonds or other evidences of indebtedness of any other corporation, domestic or foreign, except by the express permission of the public service commission of the proper district."

and Section 159 provides:

"The provisions of any act and parts of acts, including the charter of Greater New York and the charter of any other city of the state, which are inconsistent with this act, and in so far only as they are inconsistent with this act shall have no application to the rights, powers and obligations conferred or created by and under authority of this act or to any proceedings thereunder."

The Stock Corporation Law, Section 15, provides:

"Any domestic stock corporation and any foreign stock corporation authorized to do business in this state lawfully owning all the stock of any other stock corporation organized for, or engaged in business similar or incidental to that of the possessor corporation may file in the office of the secretary of state, under its common seal, a certificate of such ownership, and of the resolution of its board of directors to merge such other corporation, and thereupon it shall acquire and become, and be possessed of all the estate, property, rights, privileges and franchises of such other corporation, and they shall vest

in and be held and enjoyed by it as fully and entirely and without change or diminution as the same were before held and enjoyed by such other corporation, and be managed and controlled by the board of directors of such possessor corporation, and in its name, but without prejudice to any liabilities of such other corporation or the rights of any creditors thereof."

The Public Service Commissions Law, Section 54, provides that:

"_____ No stock corporation of any description, domestic or foreign, other than a railroad corporation, street railroad corporation, or electrical corporation, shall purchase or acquire, take, or hold, more than ten per centum of the total capital stock issued by any railroad corporation, or street railroad corporation or other common carrier organized or existing under or by virtue of the laws of the state _____"

The question is presented whether this provision of Section 54 of the Public Service Commissions Law applies to this proceeding, and if so whether it is inconsistent with the provisions of Section 157-B of the Transportation Corporations Law, and therefore "inapplicable" by virtue of Section 159 of the Transportation Corporations Law.

In construing statutes the sense should be adopted which promotes in the fullest manner the apparent policy and objects of the legislature. Doubtful and obscure phrases and imperfect language in a statute are to be interpreted so as to give effect to the presumed intention of the legislature. We have a right to consider the particular mischief it was designed to remedy, and the history of the period preceding its enactment (*Woolcott v. Shubert*, 111 N. E. 820, 217 N. Y. 212; *Matter of Matthews*, 59 App. Div. 159). What was the legislative intent in enacting Article 10-A of the Transportation Corporations Law providing for the incorporation of freight terminal companies, and specifically what was the purpose of Section 157-B thereof? It is evident that the purpose of the article was to permit the incorporation of one single company which would have all the broad powers necessary for the operation of a modern terminal property, thus obviating the necessity for the formation of various companies to carry on respectively the various branches of the enterprise and thus securing economy and efficiency

in operation. Under the law as it existed prior to the enactment of Article 10-A this was not possible, and as a result two or more corporations were necessary to enable the operation of a terminal. Article 10-A was intended to relieve this anomalous situation and permit the incorporation of one company with all the necessary powers, which, however, should be subject to regulation and supervision by the Public Service Commission. While such incorporation undoubtedly would grant relief to future enterprises, it would not relieve the conditions existing with respect to terminals already in operation at the date of its enactment. It is believed that Section 157-B was inserted to meet this situation and enable a company formed under Article 10-A to merge with it under one head, with all the broad powers granted by the Act, any existing company which was organized under "any general or special law of the state for the purpose of carrying on any business included within that which a corporation organized under this article might carry on," upon complying with the procedure set forth in Section 15 of the Stock Corporation Law.

Clearly, the Railroad Company was formed for such a purpose, and its business could now be carried on by a freight terminal company. Its certificate of incorporation provides:

"Third: The kind of road to be built and operated shall be a railroad of standard gauge to be operated by steam power, a dummy or locomotive engine of the switching variety being used, which said railroad is to be operated as a freight railroad exclusively, receiving and distributing all classes of freight for and to all shippers of merchandise in the Borough of Brooklyn, County of Kings, City and State of New York.

"Fourth: Such railroad is to be built, maintained and operated from a point on the Easterly bank of the East River between North Third Street and North Fourth Street as its western termini, running thence easterly about one-half mile to a point east of Wythe Avenue between North Third and North Fourth Streets, which said last point will be the eastern termini of said road, which points hereinbefore referred to are in the Borough of Brooklyn, County of Kings, City of New York, and said railroad as completed between said points will be wholly within said Borough, County and City."

Section 154 provides that, "Three or more persons may be-

come a corporation for the supply, maintenance and operation of freight terminal facilities—including terminal ways for initial or final local transport of freight received for shipment or delivery in or from the locality in which the business of such corporation shall be carried on."

A terminal way is defined by sub-division "d" of Section 153 of the Act as follows:

" 'Terminal ways' means a way or ways constructed or operated under the provisions of this article for the transport of freight to, from, across or along any water-front or marginal wharf of the city or terminal stations or terminal stores adjacent or in proximity thereto or any extension or extensions, branch or branches, approach or approaches, siding or sidings thereof, upon, lying upon, above, or below any street, avenue, road, highway, park or parkway, bridge, viaduct or public place or water-front property in the city, including all equipment and terminal facilities, of every kind used, operated or owned by or in connection with any such way so constructed or operated under this article."

These are the very purposes for which the Railroad Company was incorporated as appears from its certificate of incorporation. The question is not whether the Railroad Company operates a "sham" railroad, or whether it is long or whether it is short, but whether it appears to be in fact what is defined under the Act as a terminal way for the initial or final transport of freight. It must follow therefore that in the absence of the prohibition of Section 54 of the Public Service Commissions Law the petitioner may acquire all the stock of the Railroad Company and a merger can then be effected.

The provision of Section 54 of the Public Service Commissions Law quoted above was enacted to prevent the acquisition of the stock of railroad or public utility corporations by holding companies formed under the Business Corporations Law, which was a common practice before the passage of the Public Service Commissions Law, and which led to many abuses. The Commission has no control of such a holding corporation in its relation with the corporation it controls, as to the issue of securities by the controlling corporation against securities or contracts of the controlled corporation, nor of the accounts of the controlling corporation as to business

transactions between them, nor of the administration by the controlling corporation of the controlled corporation's properties, moneys, or securities, nor of the contracts made between them. The prohibition was therefore inserted in order that no corporation could acquire the control of a railroad or a public utility which was not itself subject to the supervision of the Commission. The evil which this provision was intended to correct can not exist in the present case because the Freight Terminal Company upon acquiring all of the capital stock of the Railroad Company and merging the latter with it, will in accordance with the specific provisions of Article 10-A be subject to the closest supervision by this Commission.

Section 157-B also expressly provides that no freight terminal company shall acquire the stock of any corporation without the consent of the Commission, thus affording ample protection against the abuses arising from holding companies. It is evident that in enacting Section 54 of the Public Service Commissions Law the legislature did not have in mind the situation which has here arisen, and that the prohibition therein contained was not intended to apply to a corporation which was required to obtain the Commission's consent to the acquisition of stock, for such consent can be withheld where such acquisition may be deemed inimicable to the public interest. Furthermore, if no freight terminal company could acquire all the stock of a railroad company, which is in fact a terminal way, it could not of course merge such railroad, and the result would be that despite the evident intention of the statute and the broad language of Section 157-B, *no* company which of necessity was formed under the Railroad Law, although a part of the terminal property, could ever be merged with the freight terminal company although it was in fact, to quote Section 157-B, "organized for the purpose of carrying on any business included within that which a corporation organized under this article might carry on." If, in view of its evident purpose, Section 54 of the Public Service Commissions Law was intended to have any application at all, I believe that it is "inconsistent" with the provisions of Section 157-B and is therefore made inapplicable by Section 159.

SECOND: The other objection to the merger is based upon Section 149 of the Railroad Law which provides in substance that any railroad company being the lessee of the road of any other railroad company may upon the acquisition of all of the former's capital stock become possessed of its property and franchise by filing

a certificate in the office of the Secretary of State. It is argued that even if the petitioner could acquire all of the capital stock of the Railroad, yet not being itself a railroad corporation, and not being the lessee of the Railroad, it could not merge the latter company. While the section referred to provides under what conditions a railroad company may merge another railroad company, it makes no reference whatever to conditions upon which a railroad company (of the class indicated) may be merged *with a freight terminal company*, and is not in any way inconsistent with the provisions of the Freight Terminal Act. If, however, it is deemed inconsistent, for the reasons already set forth, I believe that it is made inapplicable by the broad provisions of Section 157-B.

THIRD: Although Section 154 of the Transportation Corporations Law specifically provides that the corporate name shall include the words "freight terminal company," the petitioner was permitted to incorporate under the name Brooklyn Eastern District Terminal, the name of the Navigation Company. This is sought to be justified because of the provision in General Corporation Law, Section 6, viz:

"A corporation formed by the reincorporation, reorganization or consolidation of other corporations or upon the sale of the property or franchises of a corporation, or a corporation acquiring or becoming possessed of all the estate, property, rights, privileges and franchises of any other corporation or corporations by merger, may have the same name as the corporation or one of the corporations to whose franchises it has succeeded."

The Secretary of State was of the opinion that when this provision was added to the Section by Chapter 24 of the Laws of 1913, the express requirement in Section 154 of the Transportation Corporations Law was then in force, and that therefore it must be assumed that the legislature in enacting the amendment had in mind the requirements of the Transportation Corporations Law. Based upon this view he was of the opinion that the incorporators would have the right to take the name Brooklyn Eastern District Terminal provided the certificate of incorporation of the new company contained a provision that one purpose was to take over the good will, property, and assets of, and carry on the business here-

tofore conducted by, the Brooklyn Eastern District Terminal, incorporated June 22, 1906.

Acting upon this opinion the petitioner was incorporated with the name Brooklyn Eastern District Terminal. While it would have been more in accordance with the letter of the Statute for the petitioner to have incorporated with the title including the words "freight terminal company," and then upon obtaining permission to merge the Navigation Company to assume the latter's name pursuant to Section 6 of the General Corporation Law, nevertheless, I am of the opinion that the failure to follow this procedure is at most a mere irregularity cured upon the proposed merger and not a sufficient ground for denying the application. The provisions of the statute prohibiting the incorporation of a company with a name similar to one already in existence has for a long time been interpreted by the office of the Secretary of State to permit the incorporation of a new company with such similar name, with the consent of the old company and with a statement in the certificate of the new of the intention to acquire the assets and business of the old. The construction placed upon a statute by the officers whose duty it is to execute it is entitled to great consideration, especially if such construction has been made by the highest officers in the executive department or has been observed and acted upon for many years. Such construction should not be disregarded or overturned unless it is clearly erroneous (36 Cyc. 1140; *City of New York v. New York City Railroad Company*; 193 New York—543, 549). This accepted construction should not be disturbed because of the mere technical objection that the company should first be incorporated under another name and then assume the name of the old company upon acquisition of its capital stock and the merger of the two. The amendment to Section 6 of the General Corporation Law was passed to enable the preservation of the good will which attaches to the name of the company to be merged, and to accomplish that end should be liberally construed. The foregoing considerations also dispose of the objection that the other provision of Section 6 as to the corporate name was not complied with.

Upon the merits, there is no objection to the application. The combination of the various corporate agencies under one head will not only lead to economy and efficient management and ease in supervision, but will also undoubtedly permit the operation of the tracks north of North 4th Street under a *legal franchise* and thus

enable the company to continue to serve the community to whose welfare it is so important a factor.

I advise that the application be granted.

(STRAUS, *Chairman*, HODGE, WHITNEY and HERVEY, *Commissioners*, concurring.)

In the Matter of the Complaint of A. HERMANN and OTHERS
Against THE NEWTOWN GAS COMPANY.

CASE NO. 1610

Valuation—Gas Corporations—Going Value Disallowed Where Earnings are Sufficient.—Where upon a valuation for rate purposes it appears that the respondent has earned about \$400,000 above a return of seven per cent on its investment after deducting depreciation and at least one-third of the property has been built up out of earnings in excess of a fair return, there are no "aggregated deficits" in earnings to justify an allowance for going value.

Valuation—Gas Corporations—Cost of Meter Installations—Charge to Capital Disallowed When Already Charged to Operation.—Where the practice has been to treat the cost of installation of gas meters as an operating charge it will not again be allowed as a capital charge in a valuation for rate making purposes.

Valuation—Gas Corporations—Contractors' Profits—Overhead Charges—Fictitious Charges Disallowed.—In a valuation for rate purposes the respondent claimed in addition to the appraised value of the physical property on the basis of cost of reproduction less depreciation, with certain adjustments to actual cost, an allowance of 20 per cent for contractors' profits, engineering, administration, contingencies and incidentals and 12 per cent for preliminary and development expenses. HELD,—that it is palpably inconsistent to assume costs as higher than the actual costs to the company and still claim that an allowance should be made for contractors' profits on the theory that reproduction would be done through a general contractor. Allowances for other overhead expenses, including promotion expenses, should likewise be based on actual expenditures, and not on theories as to what such expenses might be.

Valuation—Gas Corporations—Interest During Construction.—The property of the respondent having been built up by yearly additions, interest during construction will be allowed at the rate of six per cent per annum only for an average period of one-half year.

Valuation—Gas Corporations—Working Capital.—An allowance will be made for actual working capital which, however, is not the difference between current assets and current liabilities as claimed by the respondent.

Valuation—Gas Corporations—Cost of Reproduction Less Depreciation—Valuation Fixed for Rate Purposes.—Upon an appraisal of the

property of the N. G. Co. for the purpose of fixing the rate for gas in the Second Ward of the Borough of Queens, the value of the property of the respondent apportioned to gas distribution in said ward is fixed as of June 30, 1914, at \$1,600,000, consisting of reproduction cost of physical property less accrued depreciation, with certain adjustments to actual cost, \$1,400,000, overhead charges, \$50,000, land \$50,000, and working capital \$100,000, additional allowance of \$125,000 being made for additions to property and increase in working capital in 1915 and of still another \$125,000 in 1916.

Rate of Return on Investment—Gas Corporations—Seven Per Cent Allowed.—A seven per cent rate of return on the investment in the property of the respondent is liberal in view of the fact that its stock is controlled and its capital supplied by the B. U. G. Co., whose bonds and stock sell on a basis of five per cent and less than seven per cent respectively.

Depreciation—Gas Plants—Straight Line Method—Three Cents per M. Cu. Ft. Allowed.—A charge to operating expenses is allowed for depreciation and contingencies on the straight line basis of three cents per M. cubic feet of gas sold.

Rates—Gas Corporations—Cost of Distribution—41 Cents per M. Cu. Ft. Adequate.—An allowance for distribution of 41 cents per M. cu. ft. of gas to cover cost of operating expenses incurred in distribution including depreciation and contingencies $27\frac{1}{2}$ cents per M. cu. ft., and 13 cents per M. cu. ft. as a seven per cent return on investment in distribution property, including gas holder, is adequate.

Rates—Gas Corporations—Cost of Gas Purchased—50 Cents per M. Cu. Ft. Excessive.—A charge by The B. U. G. Co. of 50 cents per M. cu. ft. of gas supplied at the gas holder of the respondent is excessive and should be reduced to 40 cents, which upon an eight per cent estimated loss of gas in distribution is equivalent to 43.5 cents per M. cu. ft. at the consumer's meter.

Rates—Gas Corporations—Rate Fixed at 85 Cents per M. Cu. Ft.—An Order will be entered fixing the rate for gas in the Second Ward of the Borough of Queens at 85 cents per M. cu. ft. as a fair rate both to the N. G. Co. and to its consumers.

Hearings closed March 15, 1915. Opinion adopted May 25, 1916.

This proceeding was upon the complaint of A. Hermann and others against the rate for gas of one dollar per 1000 cubic feet charged by The Newtown Gas Company in the Second Ward of the Borough of Queens, and was started by an Order entered January 7, 1913, directing a hearing in the matter. Hearings were held until May 1, 1913, when, owing to the reduction of the rate to 95 cents for one year the hearings were adjourned subject to call.

Upon the re-establishment of the dollar rate hearings were resumed on June 12, 1914, and continued until March 15, 1915, when the hearings were finally closed.

On May 25, 1916, pursuant to an Opinion of Commissioner Hayward adopted on that day, the Commission entered an Order reducing the rate to 85 cents per 1000 cubic feet effective July 1, 1916, and one year thereafter.

The Order entered was as follows:

A hearing having been had upon the complaint of A. Hermann and more than one hundred customers of the Newtown Gas Company before Hon. Milo R. Maltbie, Commissioner, beginning on the 28th day of January, 1913, George J. Rhodius and Adam Christman, Jr. appearing as counsel for the complainants, and William N. Dykman appearing as counsel for the Newtown Gas Company, and Henry H. Whitman, Assistant Counsel to the Commission, attending, and an order having been made on May 2nd, 1913 discontinuing the proceeding without prejudice to its being reopened after May 1st, 1914, and the Commission having adopted a resolution on June 2nd, 1914 reopening said proceeding, and a further hearing having been had beginning on June 12th, 1914, and the Commission having made an investigation to enable it to ascertain the facts requisite to the exercise of the power conferred upon it, it is

ORDERED that the maximum price of gas to be charged by the Newtown Gas Company for gas in the Second Ward of the Borough of Queens, City of New York, on and after July 1st, 1916 and for a period of one year thereafter shall be 85 cents per thousand cubic feet; and it is further

ORDERED that this order shall take effect forthwith and shall continue in force until changed or abrogated, and that on or before June 5, 1916 said Newtown Gas Company shall notify the Commission whether this order is accepted and will be obeyed.

The further facts in the matter are set forth in the Opinion adopted.

H. H. Whitman, for the Commission.

Adam Christman and *George J. Rhodius*, for the Allied Civic Associations of the Greater Ridgewood and the Eastern District.

Dykman, Oeland & Kuhn, by *William J. Dykman*, for the Newtown Gas Co.

HAYWARD, Commissioner: The opinion which follows was submitted in November of last year, but was not acted upon by the Commission as then constituted. The changes in the personnel of the Commission since that time have made a resubmission necessary, but I have delayed such action in the earnest hope that the Legislature would enact certain legislation recommended by the Commission under Section 16 of the Public Service Commissions Law.

The legislation desired was:

(1) A law fixing the rate for gas furnished in the Second Ward of Queens. Such an enactment would of course have made action by us unnecessary and would have given immediate relief to the consumers of gas.

(2) A law providing that any rate fixed by this Commission should take effect as of the date when the rate proceeding was started instead of at or after its conclusion. Such an enactment would have removed the existing incentive to the companies to delay rate proceedings.

(3) A law doing away with the right of the companies to a review of a rate decision of this Commission by certiorari. This was in the interest of expedition, in that it removed a species of appeal which suspends a decision of this Commission and tends to delay relief to the consumers.

The Legislature has adjourned without action upon any of these matters and I therefore resubmit my opinion herein.

Since its previous submission no facts have come to light which would warrant the delay attendant upon the taking of further testimony, and I therefore make no changes in my recommendations except the postponement of the effective date of the rate recommended from January 1, 1916 to July 1, 1916. It is true that the report of this company for the year 1915, filed since my opinion was written, shows that the estimated increase in sales of ten per cent for that year did not materialize. Gas consumption in the territory involved, as well as throughout the country, remained practically at a standstill during last year. But I believe that with the postponement of the effective date of the reduction, the general improvement in business conditions and the large increase in population and consequent consumption which will follow the opening of the rapid transit lines in this territory, will cause an increase of sales which will more than make up for the lack of any increase last year. I will therefore allow my recommendations to stand.

HAYWARD, *Commissioner*: This is a proceeding originally begun in January, 1913, on complaint of the requisite number of customers under Section 71, P. S. C. Law against the Newtown Gas Company. After hearings had been held for some time, the company and complainants agreed to an adjournment of the proceedings on the understanding that the rate would be reduced to 95 cents from May 1, 1913, for a period of one year. On May 1, 1914, the company restored the dollar rate and on June 12, 1914 proceedings in this case were resumed.

There is pending before the Commission a sister suit to this one (#1807), in which the gas rate of three companies operating in the

Fourth Ward of Queens Borough is involved. These three companies, together with the Newtown Company, constitute a part of the distributing system of a great parent company, the Brooklyn Union Gas Company. And it is a parent company in the truest sense of the word. It maintains the most absolute control and ownership over them. The four companies are more than subsidiaries as that word is ordinarily used. They are the very limbs of the Brooklyn Union Company. There is an absolute and inextricable identity of interests. The four small companies supply gas to the Second and Fourth Wards but nominally. They are nothing more than paper corporations, convenient operating divisions of the Brooklyn Union Company, which owns every share of their stock and has advanced every penny invested in them. No private investors own a share of their stock or are interested in one of them. The outstanding securities of the Brooklyn Union constitute the only connecting link between the investors and these four companies. None of them manufacture a foot of gas and all that they distribute is made at and comes from the works of the Brooklyn Union Company; which company picks from among its employees the officers of the small companies, whose salaries, together with other general expenses, are arbitrarily divided and apportioned among the Queens companies and are at the most simply bookkeeping entries.

The conditions thus revealed must be borne in mind in the determination of a fair rate for gas to be charged by the particular company involved in this proceeding; for back of it all and as an absolutely controlling factor, we start with a charge of 50c. per M cu. ft. to be paid by the Newtown Company to the Brooklyn Union Company. It has been paying this amount for six years, no matter what it has cost to make gas and no matter what the rate to the consumers.

The rates of this company were not regulated by its franchise, no restrictions having been made therein on the price to be charged either to the city or to the public.

The following rates were charged:

To private consumers

Prior to May 1, 1906.....	\$1.25	per	M	cu.	ft.
May 1, 1906 to April 30, 1913.....	1.00	"	"	"	"
May 1, 1913 to April 30, 1914.....	.95	"	"	"	"
Since May 1, 1914.....	1.00	"	"	"	"

To the City for public buildings

Prior to May 1, 1906.....	1.25	per	M	cu.	ft.
May 1, 1906 to Sept. 30, 1906					
(adjusted in 1914 to 75c.).....	1.00	"	"	"	"
Oct. 1, 1906 to date.....	.75	"	"	"	"

Street lighting, before 1905 and 1906, was covered by contracts which provided for both the supply of gas and the service connected with lighting and operating the lamps. Upon the expiration of these contracts, and in pursuance of legislative provision (Act of 1905, Chapter 736), the rate was reduced to 75c. per M cu. ft. gas supplied, the city contracting separately for the service connected with lighting and extinguishing the lamps.

The reduction of the rate to private consumers from \$1.25 per M to \$1.00 per M was not made voluntarily by the company, but only under the requirements of the legislation of 1906 (Chapter 125, Section 1, Par. 2) which prescribed \$1.00 as the maximum rate to be charged in the Second Ward of the Borough of Queens. The reduction in 1913 was made after complaint had been filed with the Commission by consumers. After one year's operation, the company restored the rate to \$1.00 on May 1, 1914.

The rate, therefore, with which we are concerned, is the present rate of \$1.00 per M cu. ft.

The Newtown Company was incorporated April 13, 1891 under Chapter 37, Laws of 1848, with an authorized capital stock of \$10,000.00. It received a franchise from the Town of Newtown (now the Second Ward of the Borough of Queens) authorizing it, on March 14, 1892, to "enter upon and open said roads, street and public places" of the Town of Newtown for the laying mains, services, etc. No payment was required for the franchise.

Apparently this company was organized in the interests of the Williamsburgh Gas Light Company (one of the companies absorbed by the Brooklyn Union Gas Company), and construction work was begun by the Williamsburgh Company. In the treasurer's report, as of Dec. 1, 1895, the Williamsburgh Company is charged with the subscription for the entire capital stock of the Newtown Company. With the absorption of the Williamsburgh Gas Light Company, the Brooklyn Union Gas Company acquired also the ownership of the Newtown Company.

From the records of the Newtown Company, it appears that no securities were issued before Feb. 4, 1896, when the entire capital

stock of 100 shares was issued to the Brooklyn Union Gas Company. On Feb. 26, 1896 the capital stock was increased from \$10,000.00 to \$60,000.00 and the additional shares were issued to the Brooklyn Union Company. In the reports rendered to the Commission, the entire stock of the Newtown Company is carried by the Brooklyn Union Company under the head of miscellaneous investments at its par value of \$60,000.00. On Feb. 3, 1896 the issue of \$60,000.00 in bonds was authorized, and these bonds were also issued to the Brooklyn Union Company. Both of these issues of securities were offset against the advances made by the Brooklyn Union Company (and by the Williamsburgh Company), the result being a change merely in the form of its obligations to the controlling corporation. Throughout the period the Newtown Company has been financed by means of advances by the Brooklyn Union Company, no funds having been called in from outside investors.

Since its inception, the Newtown Company has bought gas from the Brooklyn Union Gas Company (or the Williamsburgh Gas Company). Its own operations have been throughout confined to distribution.

Consideration of this case naturally falls under two heads:

1. What is the cost to the Newtown Company of distributing gas? This involves the segregation from the maze of Brooklyn Union Company property, so far as possible, of the property (paper title to which rests in the Newtown Company), which is used in the distribution of gas in the Second Ward, and the determination of the operating costs for distribution. From this we may reach a conclusion as to what is the fair cost for distribution alone and what is the fair return on the distributed property in the public service, and thereby arrive at the amount to be added to the price charged for the gas in the first place.

2. What is the fair price the Brooklyn Union Company should charge for the gas it manufactures and sells to the Newtown Company?

The determination of these two factors should lead us to a conclusion equitable to the public and to the investor.

Now, it may be urged that because the Brooklyn Union Company is not technically a party to this proceeding, we cannot question the price it charges the Newtown Company for gas. If the Newtown Company were an independent company, distributing gas which it had bought at the best price it could get from one of two

or more sources, and if its contract for such purchase had been providently made, the power of the Commission to consider such price in determining its rate to consumers would be one question, and a very different one from that involved here. But here there is a chain of companies under one common ownership. What is paid by the subsidiary to the parent company is a matter of book-keeping. Whether the profits appear as earnings by the Brooklyn Union Gas Company, or as the earnings of the Newtown Company, they are equally beneficial to the real investors, and equally available for the payment of dividends to the stockholders of the Brooklyn Union Company. What is taken from one pocket is simply put into another pocket.

I do not doubt the right of the Commission to consider the reasonableness of the 50c. charge of the Brooklyn Union Company under *Delaware & Lackawanna Coal Co. vs. Del. Lacka. & West. R. R.* (238 U. S. 516) and *Central of Georgia R'way Co. vs. Central Trust Co. of New York* (69 S. E. 708, 717).

But if there were any doubt, the respondent company is in no position to urge it, having voluntarily assumed the burden of proving such reasonableness. Mr. Jourdan, Vice-president of the company, undertook to analyze and justify the 50c. charge. His testimony should be studied in the light of the annual reports of the Brooklyn Union Company submitted to the Commission. These reports are part of this record and must be considered in order to arrive at a fair price for gas supplied to the Newtown Company.

If, then, we can determine what is a fair price and can determine the necessary additions to that price to yield a fair return on the property used for distribution of the gas, we shall have reached a just and reasonable price at the consumer's meter.

It will be easier to reach conclusions in this case than it has been in other cases, for the reason that we need not be concerned with that elusive, intangible and troublesome thing called "going value" or consider the differences between valuation for condemnation purposes and rate making purposes, as the courts have variously but not uniformly defined them. In the case of *People ex rel. Kings County Lighting Co. vs. Willcox, et al.* (210 N. Y. 479), Judge Miller has given us the law on going value and he says, "If there was a fair return from the start, the corporation has received all it was entitled to, irrespective of how much of the earnings may have been diverted to the building up of the business" and further, "the first question,

therefore, to determine on this branch of the case was whether the company had already received a fair return on its investment. If it had received such return from the start, or if in later years it had received more than a fair return, the public would already have borne the expense of establishing the business in whole or in part, and to that extent the question of 'going value' for the purpose of fixing a present rate would be eliminated; for it must constantly be kept in mind in dealing with this problem, that the company is entitled to a fair return and no more. If it has already had it, that is the end of the matter." Again, "if a fair return in addition to the expense of building up the business has been earned from the start, the public, not the shareholders, has paid the development expense."

In my opinion, Judge Miller means that "going value" may be measured by the deficiencies in a fair return which have not been made good and that where a company has enjoyed a fair return throughout the period, there is no ground for further allowance for going value.

Witnesses for the company presented as the results of a computation, an amount which the company should have in property to cover both investment and "aggregated deficits" in a fair rate of return, if any. That calculation was based on eight per cent as the rate of return, and was certainly not unfavorable to the company. Comparison of the amount arrived at on this basis with the value of the property, found below, proves that there are no grounds for any claims for deficiencies in a fair rate of return which have not been made good, or to use the phrase of counsel, "aggregated deficits."

Furthermore, it will appear that the company involved here has earned in round numbers \$400,000 over and above a return of 7% on its investment, after deducting depreciation, treating as part of the investment all deficiencies in a fair return. It appears that at least one-third of the property has been built up from earnings in excess of a fair return. If the valuation set on the property by the company witnesses were used for comparison, it is clear that the amount derived from earnings is far greater. This account does not state the situation fully as regards profits, for there can be little question but that the Brooklyn Union Gas Company has made also a profit indirectly from the Newtown Company in the excessive price of gas charged, of which no account is here taken. This point need not be emphasized here, as the profitableness of the company to its owner, the Brooklyn Union Gas Company, can be demonstrated even if the additional profits on gas sold to the Newtown are ignored.

Property of the Newtown Company

The record gives ample data on the property used by the Newtown Company for distributing gas in the Second Ward. After making apportionment for charges on the Newtown books for property actually used for the benefit of other companies, it appears that the cost of the plant used for Newtown operations, at the close of Dec. 31, 1914, amounted to about \$1,400,000 (See Table I). This figure does not include interest during construction which was not segregated on the books from other interest and not treated as a capital expense. This point is discussed more fully below. If added to the cost, as revealed by the books, the amount will be increased by about \$50,000. At the close of the year, the Newtown Company had, also, current assets, i. e. open accounts, materials and supplies, etc., in excess of unpaid bills, consumers' deposits and other current liabilities amounting to about \$60,000. The total assets accordingly were about \$1,520,000. From this sum, deduction should be made for depreciation. As will be shown by subsequent discussion, the amount for depreciation is about \$200,000, leaving the net amount of property, as indicated by the books, in excess of \$1,300,000. (See Table II.)

The actual amount of capital supplied by the Brooklyn Union Company (and its predecessor) to the Newtown Company for the upbuilding of its property may be calculated as about \$865,000 or between \$400,000 and \$450,000 less than the cost of the plant, together with other assets. To determine the amount of capital furnished by the Brooklyn Union Company, it is necessary to deduct from the advances as shown by the books, the amount expended on property not used for the benefits of Second Ward consumers and expenses applicable to the operation of such property. After making these adjustments, it appears that the amount due to investors—the amount covering the capital stock owned by the Brooklyn Union Company and the advances made by it to the Newtown Company—was somewhat less than \$485,000. (See Table I.) This figure however does not justly represent the actual sum due to the Brooklyn Union Company, for the reason that no dividends were paid on the stock, and the interest charged on advances was very low. A calculation has accordingly been made to determine for each year the amount of return to which the Brooklyn Union Company would have been entitled, assuming seven per cent as a fair rate. The difference between the full amount of seven per cent on the invest-

ment, and the actual interest charged, has been added on to the investment and treated as part of the capital advanced. In other words, the calculation sought to establish the amount due to the Brooklyn Union Company at the close of 1914 on the theory that it was entitled to a return of seven per cent per year throughout on its investment in the Newtown Company. On this basis, treating accumulated deficiencies in return as part of the investment, the amount measuring the total investment of the Brooklyn Union Company in the property used by the Newtown Company for supplying gas in the Second Ward is in round numbers \$865,000.

In order that full data might be obtained on the value of the property used by the Newtown Company for distributing gas in the Second Ward, the Commission, through its Gas Engineer, made an appraisal of the entire property, exclusive of land as of June 30, 1914. The company also submitted an appraisal of its entire property made by a consulting engineer, Mr. A. S. Miller. For its mains, meters and services, it presented also additional figures prepared by Mr. John T. White, district street superintendent for the Queens companies and adjoining territory of the Brooklyn Union Company. It also placed before the Commission an appraisal of its lands through a real estate expert, W. M. Dean.

Mr. Hine's appraisal takes account of the actual conditions under which the property of the Newtown Company was built up. He assumes that the construction work has been done by the company, where such has been the actual practice. His calculations are based on present day prices, except for commodities such as cast iron pipe subject to fluctuations, where prices are based on a five year average. Overhead expenses are taken account of wherever charged to property in the accounting practice of the company. Depreciation according to well established practice, is computed on a straight line basis.

The appraisal of Mr. Hine, Gas Engineer of the Commission, was \$1,485,808, exclusive of land, or about 12 per cent higher than the actual cost as shown by the company's records. (Table III.) After deducting depreciation his appraisal was \$1,293,824. (For comparison between Hine's figures and actual costs, see Table III.) It is the contention of the company that Mr. Hine's appraisal does not take adequate account of the actual costs to the company as at the time of appraisal, and that his figures should be increased so as to make allowance for a larger size trench actually used by the

company for laying mains and higher unit costs for excavation and certain other items. His figures for mains, the company contends, should be increased by \$87,304. In order that there may be no question of unfairness to the company this amount may here be added although the effect of it is to allow for mains, standing on the books at \$758,674, the sum of \$845,978, an increase of 25 per cent over the actual costs. The company contends further that the figure for services should be increased by \$16,263. According to the testimony of White, the reproduction cost is \$178,303. The books show that the total cost of all services installed to December 31, 1913, was \$108,810, and that \$20,378 was paid for by the consumers, leaving the net cost \$88,432. The consumers paid 18.7 per cent of the total cost of installation. If White's figures are reduced in the same proportion, the valuation as of June 30, 1914, would be \$144,961 as compared with the actual cost on that date of \$88,793. Mr. Hine's valuation is \$136,271. The company's claim is thus apparently excessive, although no substantial difference in the valuation would result if the entire amount contended for by the company were allowed.

The company claims that for meters Mr. Hine's figures should be increased by \$116,057, to cover the cost of installation. Mr. Hine's valuation covered only the actual cost of the meters. He disallowed the cost of installation because the practice of the company had been throughout to treat meter installation as an operating expense. Manifestly, the cost of installing meters cannot be treated both as an operating expense and as a capital charge at the same time. If it is treated as a capital charge, then operating expenses each year must be reduced by the amount now charged for meter installation. According to the view of the company \$116,057 should be allowed for the cost of installing the 38,137 meters in service on June 30, 1914, or \$3.04 per meter. If this were done, the company's books should be corrected, the surplus as of that date should be increased by \$116,057, to cover the amount of earnings expended on meter installation. For 1914, when 3,354 new meters were installed, operating expenses must be reduced by more than \$10,000, for the cost of installing these meters. The net effect of these changes is small. The amount spent for meter installation in 1914 is between 8 per cent and 9 per cent of the total amount claimed for meter installation. If this amount is excluded from operating expenses and added to profits, it is enough to yield more than a liberal return on the amount to be

added to capital for meter installation. Nothing is therefore gained by making these adjustments and departing from the company's accounting practice. Examination of the books shows, however, that besides meters, there have been charged to the meter account for sundry items at various times \$13,526. As this amount was not paid for out of operating expenses, allowance should be made for it. Taking account of all of these adjustments, it appears that about \$115,000 should be added to Hine's valuation. This involves correction of Mr. Hine's allowance for accrued depreciation, with the net result that Mr. Hine's valuation would be increased by about \$100,000, that is, from approximately \$1,300,000 to \$1,400,000. This property cost the company according to its books about \$1,150,000. The valuation as here allowed is thus over 20 per cent above the actual cost.

As noted above, the company presented appraisals by Mr. Miller and Mr. White. Mr. Miller's appraisal is for the entire property, that of Mr. White is limited to mains, services and meters. Mr. White submitted two sets of figures, one giving "bare bone" costs and another adding "doubtful items" to cover certain street department overhead expenses not included in his first estimate. Mr. Miller's figures in their final form contain numerous percentage allowances for overhead expenses of various sorts, engineering and superintendence, contractors' profits, interest and taxes during construction, promotion, financing, etc. These appraisals must be reduced as nearly as possible to a common basis, in order that any comparison may be made. This is done in Table IV for mains, meters and services. The actual costs as per books are shown, and side by side, Mr. Hine's appraisal, the basic figures in Mr. Miller's appraisals, percentage additions excluded, and Mr. White's appraisals. The figures shown are not strictly comparable for the reason that the cost shown by the books and Mr. Hine's appraisal cover more than the items of material and labor in Mr. Miller's estimate or the elements included in Mr. White's figures. Mr. Miller's basic figures for mains, meters and services, without addition for contractors' profits and other overhead expenses, is \$1,471,567. Mr. White's "bare bone" estimate is \$1,415,367; with doubtful items added, his figure is \$1,568,613. The cost as shown by the books for this property is \$1,001,274. Mr. Hine's appraisal of this property was \$1,149,067, and if this amount is increased in keeping with the discussion indicated above, the total is in round figures

\$1,275,000. Mr. Miller's figures are \$400,000 or 40 per cent. above the cost as per books. Mr. White's figures, with doubtful items added, are still more excessive. The lowest of the company's estimates is \$250,000 above the appraisal of the Commission's engineer. The higher estimate of Mr. White is over \$400,000 in excess of Mr. Hine's figures. A part of this difference is due to the fact that the company's engineers included in their valuation, the portion of the service which had been paid for by the consumers and which is their property. Furthermore they included in their valuations the installation of meters, an expenditure which the company has consistently charged to operating expenses.

This aspect of the valuations has already been noted above. However, on mains, where there are no differences of this character, the appraisers differ among themselves and are all far above the cost as recorded on the books. Mr. Miller's figure is nearly \$300,000 above the cost as per books, and one of Mr. White's estimates shows even greater discrepancy. In this connection it is important to bear in mind the fact that over two-thirds of the expenditures on mains were made within the last ten years and about one-half within the past five years. We are here confronted with a conflict between the actual cost in comparatively recent years and the opinions of witnesses as to what it might cost to replace the property under the hypothetical conditions, the conclusions of the witnesses being far apart.

Mr. Miller submits an appraisal for the entire property used for gas operations in the Newtown territory amounting to \$2,586,783. Excluding his estimate of working capital and land, his figure is approximately \$2,400,000. This covers only one-third of the holder station and transmission main. It will be noted that the amount is nearly double the actual cost as shown by the books, and about \$1,000,000 higher than Hine's appraisal. Mr. Miller starts with a figure for material and labor of \$1,763,158 which is \$450,000 in excess of the total cost of all property as shown by the books and nearly \$300,000 in excess of Hine's appraisal for such property. That his basic figures for labor and material are excessive has been indicated by a comparison of his appraisal with the book figures in connection with mains, meters and services. This point may be shown even more clearly in connection with the gas holder erected during 1910-1911. His figures for material and labor alone are \$615,560, whereas the books show that \$616,281 was the cost, cover-

ing not merely material and labor, but the total contract price paid for the holder erected, together with 10 per cent profit on the foundation, charges for incidental labor and material furnished by the gas company and charges for engineering and inspection during construction.

To his basic figures for holder and distribution system including land and working capital, Mr. Miller adds various percentages for promoters' profits, interest, taxes, contractors' expenses and profits, engineering, etc., amounting in the aggregate to \$645,958 or approximately 35 per cent. These percentage additions are made without any inquiry into the facts. For many of them there is no evidence that any expense was ever incurred. Some of the items for which he adds percentages were covered by charges to operating expenses, and their inclusion in property would necessitate a revision of the books for income and profits. The whole valuation is a fabric of estimate and hypotheses.

As was said in the case of Fuhrmann vs. Cataract Power & Conduit Co. (3 P. S. C. R. 2nd Dist. N. Y. 656) :

"—the fundamental question is whether in determining the amount of the fair investment upon which the return shall be made, in other words, the value, we shall give chief weight and importance to the actual cost to the company within a recent period as disclosed by its own books, or allow that cost to be overridden by the conflicting proof which is submitted of what the witnesses think the property would now cost if reproduced."

The answer of the Commission made in that case is fairly applicable here.

"—the fair value of the property used in the public service, or what is equivalent thereto, the fair amount of the investment upon which the return should be computed, may be better ascertained by giving the greater weight to the actual cost as the basis of the inquiry than in any other way."

It is manifest that the appraisal of Mr. Hine, modified as already indicated, is very generous and must be regarded as the maximum amount in the determination of the value of the property for the purpose of these proceedings.

For purposes of comparison the foregoing discussion has omitted land, as this item was not considered by Mr. Hine or Mr. White. The only testimony in the record on land was given by a witness called by the company who assigned the following values :

Land for general structures	\$35,361
Land at holder station (1/3 applicable to Newtown)	14,227
Total	<u>\$49,588</u>

His valuation was not based on actual sales in the immediate neighborhood. From the admissions of the witness on cross examination these figures appear to be excessive and they are far higher than the assessments. However, the entire amount involved for land is comparatively small, and the acceptance of this figure will not appreciably affect the totals.

A claim is made in the brief for the company for the allowance of 20% in addition to tangible property for contractors' profits, engineering, administration, contingencies and incidentals on the theory that this charge or more has been allowed by this Commission in other cases. In addition to this 20% the company claims about 12% for preliminary and development expenses, which covers interest during construction, taxes during construction, organization expenses and other development items.

I took occasion in the Bronx Gas and Electric Light Co. case (#1667) to protest against the arbitrary and what seemed to me grossly excessive allowance for these items, not because it was so important in that case, but because it seemed to me the Commission, by making this allowance arbitrarily, was setting a premium on the destruction of books and records of companies involved in rate cases. In the later cases before the Commission, where the actual figures have been available, no such allowance has seemed warranted. If any allowance is to be made, there must be some ground for it. If the circumstances are such as to warrant the belief that the original costs shown or appraisals made are sufficient to include these items, then no allowance whatever should be made.

The claim made for an allowance for contractor's profits rests on the assumption that the contractor performs a real service in providing a supervisory and clerical staff, an organization and equipment, and in general facilities for the work of construction superior to those of the company. His profit is intended to cover the expense incurred over and above the bare cost of material and labor.

The services of the contractor are called in on the theory that it is cheaper to have the work performed by him than for the company to undertake construction itself. It is assumed that he can get lower prices for material and labor and enjoys economies through carrying on work on a large scale. Otherwise there is no justification for employing a contractor. Where, however, the work is actually done by the company, the company necessarily provides the organization and equipment, and itself incurs the expenses which the contractor would bear. These expenditures necessarily appear on the books. Where a valuation follows closely the actual conditions under which a plant was built up, adopts the labor and material costs incurred in piecemeal construction, and all other expenditures actually made, it is absurd to claim that to these actual expenditures there should be added a hypothetical contractor's profit. It is palpably inconsistent to assume costs as high or higher than the actual costs to the company and still claim that an allowance should be made for contractor's profits on the theory that reproduction would be done through a general contractor.

This view is accepted by this Commission and is embodied in the contracts drawn by this Commission for the construction of the great Dual Subway System which have been proclaimed as the last word in equity and fairness. It is there clearly set forth that wherever the work is done by the company, no contractor's profit should be allowed to the company on the work done.

In the Newtown case, the property was constructed and put into use gradually and piecemeal without resorting to contractors as a general rule; and where contractors were employed, the cost was shown in the books and has been considered in the gas engineer's valuation. For example, the largest single item of construction in the Newtown property was the holder station, involving an outlay of approximately \$800,000, of which one-third is chargeable to the Newtown Company. This enormous holder was constructed under contract and in the valuation of the gas engineer, the contract price was made the basis, allowances being added for the services of the employees of the company and the expenditure made by the company for engineering and inspection, material and labor supplied by the Newtown Company in connection with the erection of this holder. To add to this contract price, the general contractor's profit, would be the height of absurdity.

As regards other overhead expenses, allowances should be based on actual expenditures, and not on theories as to what such expenses might be. I contend that the cost of the Newtown property is shown by the books of the Newtown Company, that the amounts expended have been charged either to capital or to operating expenses. The only exception here is interest during construction, such interest not being differentiated on the books from other interest. For this item allowance should be made. No extravagant amounts or percentages can be allowed for organization expense, when the actual expenditure was trifling and charged off against profits. Neither can an allowance be made for promotion expense, this company having been financed throughout by its present owner.

Claim may perhaps be made on the theory of reproduction cost for including in the valuation overhead expenses paid for out of earnings. If such addition is made, it follows that the company's operating expenses must be revised, overhead expenditures applicable to construction must be taken out of operating expenses. What this means may be shown readily. Mr. Dykman contended for overhead allowances amounting to \$494,029 or about 32 per cent. on the total cost of construction as estimated by Mr. Hine. During the past five years additions have amounted to approximately \$150,000 per year, the figure here used including only one-third of the holder. This means, if counsel's argument is correct, that operating expenses have been inflated by construction charges of about \$50,000 per year or 32 per cent of these additions. Deducting this sum from operating expenses, the yearly profits are \$50,000 higher than the amounts appearing on the books. Fifty thousand dollars will afford a ten per cent return on the entire amount claimed by Mr. Dykman for overhead allowances. The Company will therefore not be put to any disadvantage if no allowance is made for overhead items that have been paid out of earnings, so long as no deduction is made from operating expenses for such items.

Comparison of the amounts claimed for overhead expenditures with the details of the operating expenses, out of which they were presumably paid, tends to discredit the claims made, indicating that no such amounts could have been covered by operating expenses. There is no basis for hypothetical percentage allowance to be added to the valuation of the Gas Engineer.

The amount of interest during construction is necessarily small

under the conditions attending the growth of the Newtown property. The company has been built up through yearly additions. Extensions were made as required. Meters were installed as called for and the same is true of services. There is no appreciable period of construction during which capital is tied up. They are immediately put into operation, and under actual conditions their construction involves little or no carrying charges. The pipe and other material carried in stock is allowed for under working capital. Mains, too, are extended as required. Though their construction requires a longer period than services, they are put into operation as soon as completed. A construction period of one-half year on the average is fair. Assuming interest at 6 per cent per annum, this would mean interest at the rate of 3 per cent on the amount charged to construction. This is the rate assumed on extensions in the Milwaukee case by the Wisconsin R. R. Commission, 10 Wis., R. R. Com. 1, and in the valuation of additions in the report of the City Electrician on the Commonwealth Edison Company of Chicago (May 1913 p. 31). The interest during construction on the holder station may be determined more accurately from the record. Thus, the construction of the holder began in 1910, and operation was started in July, 1911—a period of one and one-half years at most or an average period for the entire investment of about nine months. The pumping station was begun in August, 1911, and practically completed in December, 1912, a lesser construction period. The interest during construction of the office building may be similarly computed. An allowance of \$45,000 for interest is thus adequate, and if the allowance be made \$50,000, other items not specifically provided for will be covered.

The property thus constructed, as shown by the Newtown books and vouchers, after making proportionate deductions and allocations where part of the property is used by other companies, was about \$1,350,000 which, after deducting the amount collected from consumers for depreciation reserves, leaves about \$1,100,000 (See Table V). If the \$50,000 above referred to for interest during construction is added, the total is \$1,150,000. On the basis of Mr. Hine's appraisal, after adjustment, the amount including land and interest during construction is \$1,500,000.

Having modified, in what seems to me a proper way, the claim made by Mr. Dykman for overhead allowances and having accepted without modification the claim of \$49,587.87 for land, we arrive

at his contention on Page 5 of his brief for working capital. The claim is for "average working capital, year ending June 30, 1914, \$151,000," but it appears that his claim is based on the net current assets, deducting therefrom current liabilities. The actual current assets do not, by any means, invariably indicate the necessary amount of working capital. The chief item included under current assets is customers' accounts, gas sold but not paid for. It is figured at the selling price and includes profits and reserves which require no actual expenditure. If from the Company's figure is eliminated the profits, both to the Newtown and to the Brooklyn Union Companies, and reserves set aside which involve no cash outlay, the amount would be reduced by about \$41,000.

The actual outlay for working capital may be determined by taking account of the company's operating expenses. The charges of the Newtown Company for distribution expenses and one-third of the holder expense was less than \$210,000. The balance sheet for the close of the year indicates that after a heavy month of consumption, unpaid bills amount to about one month's sales. Allowing for gas delivered to customers but not yet metered or billed, the amount involved would not be more than two months operating expenses, or about \$35,000. The manufacturing cost of gas to the Brooklyn Union Company at the holder with general expenses added for two months' supply to the Newtown would not exceed \$45,000 to \$50,000, making a total of about \$85,000 at the utmost. With allowances for operating supplies and for pipe stock and other materials used for services and minor extensions, the total would be about \$110,000. This takes no account of the fact that part of the expenses and materials and supplies may be covered by unpaid bills. An allowance of about \$100,000 is thus fair to the company.

The same amount may be arrived at by a study of the balance sheets as of the beginning, middle and close of the year which form a part of the record. Outside of consumers' deposits the current assets exceed the current liabilities by about \$115,000, but this includes an average of about \$30,000 of profits and reserve on the books of the Brooklyn Union and Newtown Companies which do not involve cash outlays. The net expenditure of capital involved in the current assets is less than \$100,000, which sum would more than take care of the investment in the current assets shown on the books.

The totals then, predicated on Mr. Hine's appraisal, would be in round numbers as follows:

Hine's appraisal as adjusted with accrued depreciation	
deducted	\$1,400,000
Overhead	50,000
Land	50,000
Working Capital	100,000
	<hr/>
	\$1,600,000

This sum, I believe, would be a proper valuation on June 30, 1914, on which the corporation is entitled to a fair return and under which valuation, if gas be purchased at a fair price from the Brooklyn Union, the public could be served at a reasonable cost. Considering the actual investment in the property and its cost, the amount here taken is generous in the extreme.

The amount here arrived at for June 30th, 1914, may be said to stand for the fair value of the average amount of property in service during 1914. The rate to be established cannot take effect before 1916. Meanwhile additions have been made to the property and further additions will have to be provided to take care of the company's rapidly growing business. Similarly sales are increasing and any substantial reduction of the rates is likely to stimulate the consumption of gas even beyond the normal rate of growth. These factors must be taken into account in fixing a rate for the future. On the basis of experience during the past five or six years, it may be estimated that the net increase in property after deducting accrued depreciation will not exceed \$125,000 per year. This is a liberal allowance both for additions to property and for increase in necessary working capital. The average amount of property in use for distributing gas to consumers of the Newtown Company may thus be estimated at \$1,725,000 for 1915 and \$1,850,000 for 1916.

A fair estimate of the rate increase in gas sales may be taken at 12 per cent per year. This is lower than the rate of growth in the past. Sales of gas to the City have increased but slowly; calculations for 1915 and 1916 are therefore based on the progress in sales to private consumers. In 1914 the total sales amounted to approximately 825,000 M cu. ft., of which 777,000 was sold to

private consumers. Applying 12 per cent to the sales of 1914, it may be estimated that the total volume of gas sold in 1915 will be about 918,000 M cu. ft. and in 1916, about 1,023,000 M cu. ft.

The fair value of the property used by the Newtown Company for distributing gas, and the volume of gas sold, give a basis for determining the amount which the consumer must pay in the rate in order to provide a fair return to the Newtown Company. The amount so ascertained must be added to the operating expenses of the Newtown and the cost of gas on the basis of a fair price. If six per cent is assumed to be the proper rate of return, the amount which must be paid by consumers as a fair return on Newtown property is between 11c and 11½c per M cu. ft. If the calculation is made on a seven per cent basis the amount is about 13 cents per M cu. ft.

I have fixed on a 7% rate on the investment because I believe that rate to be liberal under the circumstances of this case. In some of the older cases before this Commission a higher rate was allowed. These earlier cases however involved small independent companies which did not have the facilities for obtaining capital and credit available to the Brooklyn Union Company. These cannot well be used as precedents here. The rate should be determined for this case. The Public Service Commission for the Second District in the so-called Buffalo Electric cases (*Fuhrmann vs. C. P. & C. Co.*, 3 P. S. C., 2nd Dist., 565-738, and *Fuhrmann vs. Buffalo G. E. Co.*, 3 P. S. C., 2nd Dist., 739-811), indicated that it did not regard six per cent as confiscatory. In the *Consolidated Gas case* (*Willcox v. Consolidated Gas Co.*, 212 U. S., 19) it was held that a rate of 6% would not be regarded as confiscatory, and in a decision of the United States Supreme Court handed down June 14, 1915 (*Des Moines Gas Company, appellant, vs. City of Des Moines, et al*) this position was again taken.

Under normal conditions, it has always been supposed that the rate of interest in the City of New York, the money center of this continent, is lower than elsewhere in the country at large. It should be borne in mind that the credit standing of the Brooklyn Union Company is such that its bonds command a market on a 5% basis, and its capital stock sells at a price which yields the investor less than 7%. Under a normal distribution of the investment as between stockholders and bondholders a return of seven per cent. on the entire investment permits dividends to stockholders at a

much higher rate than seven per cent. Thus the Brooklyn Union Gas Company has outstanding \$15,000,000 on bonds and \$18,000,000 in stock. If the fair value of the property were represented by \$33,000,000, a return of 7% would permit dividends of between 8½ and 9%.

The operating expenses of the Newtown Company for the distribution of gas, including taxes and uncollectible bills, but deducting the proportion of holder expenses, etc., applicable to other companies, amounted in 1914 to \$211,784 or 25.7 cents per thousand cu. ft. of gas sold. These expenses apply not only to the sale of gas but also to the sale of appliances and other activities intended chiefly to promote the sale of gas, which yield incidentally a miscellaneous revenue to the company. The miscellaneous revenue in 1914 amounted to \$10,693 and may properly be regarded as an offset to operating expenses. The net amount applicable to the sale of gas is thus approximately 24½ cents per M cu. ft. The figure for 1914 may be taken as a basis for calculations for the immediate future. Some items of expense may perhaps increase, on the other hand it may be expected that certain items of general expense should decrease per M cu. ft. with growth in the volume of business.

To operating expenses, taxes and uncollectible bills, there must be added an allowance for depreciation. The annual depreciation on a straight line basis was estimated by the Gas Engineer as \$26,444. As certain elements in the valuation were added to, the annual depreciation computed on the straight line basis would have to be revised to approximately \$27,500. This is, however, more than the amount which should be charged to operating expenses. Minor replacements are taken care of through operating expenses. In the case of one large item of property, services, replacements are charged as repairs under the accounting regulations of the Commission. For this item alone over \$4,000 is allowed in the calculation of annual depreciation. As the repair accounts provide for replacements to some extent, the total amount of annual depreciation as calculated under the straight line method would be excessive. A fair allowance for depreciation, including contingencies, would be about \$25,000 for 1914. This figure should be increased by about \$2,500 a year to provide for depreciation on additions to property. The amount to be set aside for depreciation is thus about 3 cents per M cu. ft. of gas sold. The total amount to cover operating expenses, taxes, uncollectible bills and depreciation, after

taking account of miscellaneous revenue is thus approximately $27\frac{1}{2}$ cents per M cu. ft. of gas sold. With 13 cents added as a return on the property used for the distribution, the amount justly chargeable to the customer for the services of the Newtown Company is about 41 cents. More accurate calculations appear in Table VI given below.

What does this mean? It means that if the Newtown Company got its manufactured gas for nothing, a proper charge to the consumers would be a little more than 41 cents. It means that if the Brooklyn Union saw fit to arbitrarily charge the Newtown Company one dollar per M and there were no statute forbidding it, the Newtown Company might charge \$1.42 per M. It would be an appalling situation, if then, we were confined to a consideration of this case without considering the reasonableness of the charge made by the Brooklyn Union. The consumers who instituted this suit are not customers of the Brooklyn Union, and therefore under the Public Service Commissions Law would have no redress and would have to wait for the Commission to take the initiative in bringing a rate case against the Brooklyn Union.

We come to the second proposition set out at the beginning of this opinion, that is, the reasonableness of the rate paid to the Brooklyn Union. As stated before, since 1909 the price has been 50 cents per M cu. ft. of gas sold to the Newtown Company, the volume of sales being computed on the assumption that eight per cent is lost in distribution; the actual cost per M cu. ft. delivered to the consumer in the Newtown territory after account is taken of distribution losses and gas used by the company is accordingly, about 54.5 cents. Mr. Jourdan, Vice-president of the company, took the stand in this case and undertook to justify this charge. The several items making up his schedule of cost, together with certain deduction of the revised figures, are clearly set forth in appendix table VII. Mr. Jourdan arrived at the total of 49.50 cents which included an estimated increase of expenses for 1913 over 1912 of 7 cents. This was based on the increased price for coal and oil, the calculations resting on the figures for the year 1913, when the price for oil was far above the average. The company has under contract a supply of oil to cover its needs for 1915 and 1916 at a price lower than the one paid in 1912. Moreover other operating expenses are on the whole lower. We are fixing the rate for the year 1916 and not for the year 1913, and if we

took the average price of oil for the past six years and the present actual contract prices for 1915 and 1916, there is no warrant for assuming operating expenses above 1912, so that this one item alone would cut Mr. Jourdan's figures down to 42.50 cents. Even then this figure would be too high, for it includes approximately one cent for the operation of outside holders. As the Newtown Company provides its own holder the cost of gas supplied to it should not be burdened with the full expenses of maintaining and operating outside holders.

Other allowances in Mr. Jourdan's statement are excessive. He allows 4 cents per M under the head of general expenses including transmission, but the general expenses cover all branches of the Brooklyn Union gas business, distribution and commercial operations, as well as manufacturing. Together with transmission the cost is only about 4 cents per thousand cubic feet of gas made. The charge for general expenses and transmission should be cut in two to be fairly applicable to gas supplied to the Newtown Company. (See Table VII.) Mr. Jourdan allows interest at 8%. It has been heretofore stated that the securities of the Brooklyn Union command a market at 5% for bonds and less than 7% for stock, so that it would seem that a 7% rate on the entire investment is perfectly fair and proper. This would make a further reduction. Taxes are allowed by Mr. Jourdan at 1.7 cents, although the taxes on the real estate of the Brooklyn Company covering not only generating plants but also holders are only about 1.2 cents. On the whole a charge of 40 cents by the Brooklyn Union Company would be reasonable; on Mr. Jourdan's own figures and on the plain facts appearing in the annual reports, the Brooklyn Union Company could sell at this price and still render a fair return to the investors in its property. At a price of 40 cents, the cost of gas to the Newtown at the consumers' meter, after allowing for distribution losses and gas used by the company, is approximately 43.5 cents.

On these figures and on the conclusions reached before as to the fair cost of distribution to the Newtown Company, I arrive at 85 cents as a fair allowance for gas sold to private consumers. Accompanying tables show the revenue and income to the company under present rate and under an 85 cent rate. These show that a rate of one dollar yielded in 1914 over 14% on the fair value of the property, 18% on the cost of the property and 26% on the Brooklyn Union investment. A rate of 85 cents gives a return of seven

per cent on all property devoted to public service for supplying gas, nine per cent on the actual cost of the property and twelve per cent on the Brooklyn Union investment. The rate of return adopted, and the allowances for operating expenses used in the calculations, make provision for contingencies and surplus. The price of 85 cents gives substantial and equitable relief to the complainants and their fellow citizens, who have struggled for so many years to secure a determination of the merits of their claims involved in this case.

(STRAUS, *Chairman*, HODGE, WHITNEY and HERVEY, *Commissioners*, concurring).

NEWTOWN GAS COMPANY

ESTIMATED EARNINGS UNDER A RATE OF 85 CENTS FOR GAS SOLD TO PRIVATE CONSUMERS

Gas bought and Sold (M. cu. ft.)	1914	1915	1916
Gas bought (a).....	898,450	1,000,000	1,113,512
Gas sold—Commercial	777,130	870,385	974,831
—Municipal	47,850	48,000	48,000
Total sold.....	824,980	918,385	1,022,831
Revenue:			
Gas Sales—Commercial at 85¢.....	\$660,560	\$739,827	\$828,606
—Municipal at 75¢	35,885	36,000	36,000
Miscellaneous	10,693	11,000	11,000
Total.....	\$707,138	\$786,827	\$875,606
Operating Expenses:			
Gas purchased at 40¢ per M bought (a)	\$359,380	\$400,000	\$445,405
Distribution, Commercial, General, etc., at 25.67¢.....	211,784	235,751	262,551
Depreciation, estimated	25,000	27,500	30,000
Total.....	\$596,164	\$663,251	\$737,956
Operating Income	\$110,974	\$123,576	\$137,650
Valuation of Property.....	\$1,600,000	\$1,725,000	\$1,850,000
Cost of Property	1,250,000	1,375,000	1,500,000
Brooklyn Union Investment.....	865,000	990,000	1,115,000
Rate of Return on			
Valuation of Property.....	6.94%	7.16%	7.44%
Cost of Property.....	8.88	8.99	9.18
Brooklyn Union Investment.....	12.83	12.48	12.35

(a) Allowing for distribution losses and for gas used by company.

NEWTOWN GAS COMPANY

INCOME STATEMENT AS CORRECTED FOR 1914 AND ESTIMATES FOR 1915 AND 1916
ON THE BASIS OF \$1.00 PER M CU. FT. FOR GAS TO PRIVATE CONSUMERS

	1914	1915	1916
Gas bought and sold (M cu. ft.)			
Gas bought (a) M cu. ft.....	898,450	1,000,000	1,113,512
Gas sold—Commercial	777,130	870,385	974,831
Municipal	47,850	48,000	48,000
Total sold.....	824,980	918,385	1,022,831
Revenue:			
Gas sales—Commercial at \$1.00.....	\$777,130	\$870,385	\$974,831
Municipal at .75.....	35,885	36,000	36,000
Miscellaneous	10,693	11,000	11,000
Total.....	\$823,708	\$917,385	\$1,021,831
Operating Expenses:			
Gas purchased at 40¢ per M bought(a)	\$359,380	\$400,000	\$445,405
Distribution, Commercial, General, etc., at 25.67¢.....	211,784	235,751	262,551
Depreciation, estimated	25,000	27,500	30,000
Total	\$596,164	\$663,251	\$737,956
Operating Income	\$227,544	\$254,134	\$283,875
Valuation of Property.....	\$1,600,000	\$1,725,000	\$1,850,000
Cost of Property.....	1,250,000	1,375,000	1,500,000
Brooklyn Union Investment.....	865,000	990,000	1,115,000
Rate of Return on			
Valuation of Property.....	14.22%	14.73%	15.34%
Cost of Property.....	18.20	18.48	18.92
Brooklyn Union Investment.....	26.31	25.67	25.46

(a) Allowing for distribution losses and for gas used by company.

TABLE 1

PROPERTY OF NEWTOWN GAS CO. AS PER BOOKS, AND AMOUNT THEREOF USED FOR
DISTRIBUTING GAS IN SECOND WARD, DECEMBER 31, 1914

	Total Amount	Amount Applicable to Newtown Operations
Mains, services, meters, holder station, etc....	\$2,014,035	(a) \$1,406,565
Less—accrued amortization	293,441	293,441
Fixed capital—net	\$1,720,594	\$1,113,124
Current assets in excess of current liabilities...	61,782	61,782
Total.....	<u>\$1,782,376</u>	<u>\$1,174,906</u>
Brooklyn Union Investment:		
Capital stock	\$60,000	\$60,000
Advances	1,068,038	(b) 424,259
Total investment.....	<u>\$1,128,038</u>	<u>\$484,259</u>
Surplus, as per books.....	\$804,338	
Deduct, amount added arbitrarily for franchise	150,000	654,338
Total	<u>\$1,782,376</u>	<u>\$1,174,906</u>
(a) Amount as shown by books		\$2,014,035
Deduct—lamp posts, not included in inventory	\$20,035	
—two-thirds of holder property and transmission main (holder, etc., \$816,816; transmission main, es- timated \$64,336)	587,435	607,470
		<u>\$1,406,565</u>
(b) Advances by Brooklyn Union, as per books		\$1,068,038
Deduct—two-thirds of holder property, etc.	587,435	
—two-thirds of holder expenses, etc. (1911-1914)	56,344	643,779
		<u>\$424,259</u>
(c) Surplus, amount of franchise deducted.....	\$654,338	
Add—two-thirds of holder expense (1911- 1914) chargeable to B. U. investment.....	56,344	710,682
Deduct—lamp posts not included in in- ventory		20,035
		<u>\$690,647</u>

TABLE II

INVESTMENT OF BROOKLYN UNION CO. IN PROPERTY USED BY NEWTOWN CO.,
DECEMBER 31, 1914

<i>Property</i>	
Mains, services, meters, holder station, etc.....	\$1,406,565
Estimated amount for interest during construction, not capitalized	50,000
Total fixed capital.....	<u>\$1,456,565</u>
Deduct, depreciation approximated on estimates of the Gas Engineer	200,000
Fixed capital net.....	<u>\$1,256,565</u>
Other assets (excess of current assets over current liabilities)...	61,782
Total assets	<u><u>\$1,318,347</u></u>

Sources of Property

Investment of Brooklyn Union Co.:	
Capital stock	\$60,000
Advance applicable to property used by Newtown Co.....	424,259
Total.....	<u>\$484,259</u>
Add—return on investment calculated at 7% less amount credited for interest on advances.....	381,965
Total investment	<u>\$866,224</u>
Earnings in excess of a 7% return on Brooklyn Union advances, re-invested in property.....	452,123
Total—all sources.....	<u><u>\$1,318,347</u></u>

TABLE III

PROPERTY USED FOR NEWTOWN OPERATIONS—COST AS PER BOOKS, AND MR.
HINE'S APPRAISAL, JUNE 30, 1914

	Cost as per Books	Hine's Appraisal
Plant other than holder station and land.....	\$1,067,895	\$1,224,210
Holder station excl. of land.....	260,392	261,598
Depreciation	<u>\$1,328,287</u>	<u>\$1,485,808</u>
Net.....	<u><u>\$1,072,349</u></u>	<u><u>\$1,293,824</u></u>

TABLE IV
MAINS, METERS AND SERVICES—COST AND VARIOUS APPRAISALS,
JUNE 30, 1914

	Cost as per books (a)	Hine	Miller, exclusive of percentage additions	White, "bare- bone cost"	White, with certain "doubtful items" added
Mains	\$698,678	\$800,908	\$970,883	\$909,118	\$1,008,115
Meters	218,808	211,894	222,690	227,951	258,434
Services	88,793	136,271	177,494	178,303	207,964
Total	\$1,001,274	\$1,149,067	\$1,471,567	\$1,415,867	\$1,568,618

(a) Adjusted by deducting \$65,000 for the cost of transmission main not included in the estimates used for comparison, and adding on \$2,467 for undercharges on meters shown by the record.

TABLE V
COST OF NEWTOWN PLANT AND DISTRIBUTION SYSTEM, JUNE 30, 1914*

	Total	Not used exclusively in Newtown operations	Net amount applicable to Newtown operation (c)
Mains, meters, services, general structures, exclusive of land (a).....	\$1,110,895	(b) \$65,000	\$1,067,895
Holder station	781,177	781,177	260,392
Land for general structures.....	12,222	.....	12,222
Land for holder station.....	35,489	35,489	11,830
Total.....	\$1,939,783	\$881,666	\$1,352,339
Amortization as per books.....	255,938	.....	255,938
Cost, less depreciation.....	\$1,683,845	\$881,666	\$1,096,401

* With minor corrections as per record.

(a) Less sundry corrections—Deduction of \$20,035 for lamp posts not shown by inventory and addition of \$2,467 for meters undercharged on books, net charge \$17,568.

(b) The cost of the transmission main is not shown separately on the books. It is here estimated by taking a percentage of the total amount for mains, corresponding to the proportion of the estimated cost of transmission main in the total valuation of mains, as submitted by the Gas Engineer.

(c) Taking one-third of the property not used exclusively by the Newtown Co.

TABLE VI
NEWTOWN GAS COMPANY
GAS SOLD AND COST OF DISTRIBUTING GAS, 1914

<i>A. Sales of Gas</i>		
Commercial	777,130	M cu. ft.
Municipal	49,850	" " "
Total.....	824,980	
<i>B. Cost of Distributing Gas</i>		
	Amount	Cents per M gas sold
Holder and storage expense.....	\$12,720	
Transmission pumping	4,090	
Total.....	\$16,810	
Deduct, two-thirds, not applicable to New- town operations	11,206	
Holder and transmission expense applicable to Newtown Co.	\$5,604	0.68
Distribution expense (a)	\$102,913	
Deduct transmission pumping (b).....	4,090	
	\$98,823	
Deduct materials recovered from consumers' premises, charged originally to expense.	7,821	
Distribution expense (adjusted)	91,002	11.02
Commercial expense	53,188	6.45
General Expense (excl. general amortization).....	34,450	4.18
Depreciation, estimated	25,000	3.03
Taxes	\$30,022	
Deduct, two-thirds of holder taxes (c) ..	6,869	
	23,153	2.81
Uncollectible bills	4,387	0.53
Total.....	\$236,784	28.70
Deduct—Miscellaneous revenue	10,693	1.30
Net cost of distribution.....	\$226,091	27.40
Return of 7% on value of property (\$1,600,000)....	112,000	13.58
Total distribution cost including return on in- vestment	\$338,091	40.98

(a) After deducting income from Municipal lamp repairs.

(b) Transferred to and grouped with holder and storage expense.

(c) Assumed to be the same for 1914 as for 1913.

BROOKLYN UNION COST OF SUPPLYING GAS TO NEWTOWN GAS COMPANY AS
PER EXHIBIT 7 REVISED

	Cost as per Exhibit 7	Deduction	Revised
Interest at 8%	7.20 cents	(a) .90 cents	6.30 cents
Taxes	1.70 "	— "	1.70 "
Amortization	3.60 "	— "	3.60 "
General Expense	4.00 "	(b) 2.00 "	2.00 "
Cost to manufacture at works, 1912.	26.00 "	— "	26.00 "
Estimated increase in cost for 1913.	7.00 "	(c) 7.00 "	— "
	<u>49.50</u> "	<u>9.90</u> "	<u>39.60</u> "
Total.....			
Amount charged to Newtown Gas Co.....			50.00 "
Overcharged per M cu. ft. of gas supplied to the Newtown.....			<u>10.40</u> "

(a) The rate of return here assumed is 7 per cent instead of 8 per cent as in Mr. Jourdan's estimate.

(b) The general expenses including transmission are overestimated. For 1912 the cost of transmission was approximately 0.3 cents per M. cu. ft. of gas made. The general expenses per M cu. ft. of gas made amounted to 3.6 cents. These expenses apply, however, not only to gas production, but to the distribution and sale of gas. An allocation of the proportion of general expenses applicable to production should take account of the relative total expenditures for production and for other operations, and the character of the various elements of expenditure, the relative payroll charges for production and for the other purposes, and also the nature of the items entering into general expenses. The general expenses applicable to production, together with the transmission expense may be estimated at about two cents.

(c) The price of oil in 1912 was 3.17 cents per gallon; the contract price for oil, for a quantity approximately sufficient, to cover the Brooklyn Union Gas Company's requirements for 1915 and 1916 is 3.0345 cents. There is therefore a saving on oil as compared with 1912 equal to about $\frac{1}{4}$ cent per M cu. ft. of gas made. The increase in the cost of coal over 1912 is offset by the decrease in other production expenses. The production cost for 1915 and 1916 on the contract price of oil may be estimated as 25 cents. Mr. Jourdan's original estimate of 26 cents, which is about the average for the past six years is therefore more than adequate.

ALBERT C. SCHWARZ, *et al.*, Complainants, against WOODHAVEN GAS LIGHT COMPANY, Defendant. Rates for Gas in the Fourth Ward of the Borough of Queens.

In the Matter of the Hearing on the Motion of the Commission Concerning the Rates and Charges for Gas in the Fourth Ward of Queens.

CASES NOS. 1787 and 1807

Valuation—Gas Corporations—Cost of Services and Meter Installations—Charge to Capital Disallowed When Already Charged to Operation or Paid by Consumers.—Cost of services paid by consumers or cost of meter installations charged to operation will not again be allowed as capital charges in a valuation for rate making purposes.

Valuation—Gas Corporations—Cost of Reproduction Less Depreciation—Valuation Fixed for Rate Purposes.—Upon an appraisal of the property of the J. G. L. Co., the W. G. L. Co. and the R. H. & Q. C. G. L. Co. for the purpose of fixing the rate for gas in the Fourth Ward of the Borough of Queens, the value of the property of the respondents apportioned to gas distribution in said ward is fixed as of December 31, 1914, on the basis of cost of reproduction less depreciation, with certain adjustments to actual cost, at \$1,240,000.

Valuation—Gas Corporations—Going Value Disallowed Where Earnings are Sufficient.—No allowance for going value will be made in a valuation for rate purposes where upon the basis of a cumulative fair rate of return on the investment the additions and betterments to property built up out of earnings are at least equal to the total deficiency in such fair rate of return paid to the investors.

Rate of Return on Investment—Gas Corporations—Seven Per Cent Allowed.—Seven per cent is a fair rate of return on the property of the respondents.

Rates—Gas Corporations—Cost of Distribution—45 Cents per M. Cu. Ft. Adequate.—An allowance is made of 45 cents per M. cu. ft. of gas to cover cost of operating expenses incurred in distribution including depreciation 32 cents, and 13 cents per M. cu. ft. as a seven per cent return on the investment in distribution property.

Rates—Gas Corporations—Cost of Gas Purchased—50 Cents per M. Cu. Ft. Excessive.—A charge of The B. U. G. Co. of 50 cents per M. cu. ft. of gas supplied at the transmission main of the respondents is excessive and should be reduced to 44 cents, which upon an eight per cent estimated loss of gas in distribution is equivalent to 48 cents per M. cu. ft. at the consumer's meter.

Rates—Gas Corporations—Rate Fixed at 95 Cents per M. Cu. Ft.—An order will be entered fixing the rate for gas in the Fourth Ward of the Borough of Queens at 95 cents per M. cu. ft.

Hearings closed March 8, 1915. Opinion adopted May 25, 1916.

This proceeding in Case No. 1787 was upon the complaint of Albert C. Schwarz and more than one hundred other customers of the Woodhaven Gas Light Co. against the rates charged for

gas in the Fourth Ward of the Borough of Queens. An Order for a hearing was entered by the Commission on January 10, 1914. As, however, the Jamaica Gas Light Company and the Richmond Hill and Queens County Gas Light Company also operated in the Fourth Ward of Queens and charged the same rate as the Woodhaven Gas Light Company, namely one dollar per 1000 cubic feet, the Commission, by Resolution of March 17, 1914, commenced a new proceeding in Case No. 1807, directing a hearing on the rates of all the companies herein.

On May 25, 1915, the Commission entered an Order pursuant to an Opinion of Commissioner Hayward adopted on that day, reducing the rate for gas in the Fourth Ward to 95 cents per 1000 cubic feet, effective July 1, 1916, and one year thereafter.

The Order was as follows:

A hearing having been had upon the complaint of Albert C. Schwarz and more than one hundred customers of the Woodhaven Gas Light Company before Hon. Milo R. Maltbie, Commissioner, beginning on the 26th day of January, 1914, and a hearing having been had on motion of the Commission concerning the rates and charges for gas in the Fourth Ward of Queens before said Commissioner beginning on the 1st day of April, 1914, and said proceedings having been thereafter heard together, Robert C. Beyer appearing as counsel for the complainants, Alfred W. Jones appearing as counsel for the Forest Park Taxpayers Association, William N. Dykman appearing as counsel for the Woodhaven Gas Light Company, Richmond Hill & Queens County Gas Light Company and The Jamaica Gas Light Company, and Charles F. Mathewson appearing as counsel for the Brooklyn Union Gas Company, and H. M. Chamberlain, Assistant Counsel to the Commission, attending, and the Commission having made an investigation to enable it to ascertain the facts requisite to the exercise of the power conferred upon it, it is

ORDERED that the maximum price of gas to be charged by the Woodhaven Gas Light Company, Richmond Hill & Queens County Gas Light Company and The Jamaica Gas Light Company for gas in the Fourth Ward of the Borough of Queens, City of New York, on and after July 1st, 1916 and for a period of one year thereafter shall be 95 cents per thousand cubic feet; and it is further

ORDERED that this order shall take effect forthwith and shall continue in force until changed or abrogated, and that on or before June 5, 1916 said Woodhaven Gas Light Company, Richmond Hill & Queens County Gas Light Company and The Jamaica Gas Light Company shall notify the Commission whether this order is accepted and will be obeyed.

The further facts in the matter appear in the Opinion adopted.

H. M. Chamberlain, for the Commission.

Dykman, Oeland & Kuhn, by William N. Dykman, for the Woodhaven Gas Light Co.

Robert C. Beyer, for the complainants.

Alfred W. Jones, for the Forest Park Taxpayers' Assn.

HAYWARD, *Commissioner*: The Opinion, which follows, like that in the Newtown case (No. 1610) was prepared in November of last year and submitted to the Commission, but never acted upon. Its resubmission has been delayed for the reasons set out in my opinion in the Newtown Case and, as in that case, and on the grounds stated in my Opinion therein, all of which apply with equal force here, I now resubmit my opinion, making no changes in my recommendations except that the effective date of the reduction be postponed from January 1, 1916 to July 1, 1916.

HAYWARD, *Commissioner*: This case arises on complaint of more than 100 customers of the Woodhaven Company to the effect that the rate of \$1. charged for gas is excessive (Case 1787). The Commission of its own initiative has included in these proceedings the two other companies which serve the Fourth Ward of Queens. The rate complained of, namely, \$1. per M cu. ft. of gas, was established by the Legislature in 1906 (Chapter 125), and took effect on May 1st of that year. No reduction has voluntarily been made by the company since that time. The section in which the rate of \$1. is charged adjoins other territory served by the Brooklyn Union Gas Company at the rate of 80 cents. It is the contention of the complainants that the Fourth Ward should be supplied at the rate at which gas is furnished by the Brooklyn Union Gas Company in the neighboring territory, namely 80 cents.

The territory constituting the Fourth Ward of Queens is supplied with gas by three companies, namely The Jamaica Gas Light Company, the Woodhaven Gas Light Company and the Richmond Hill & Queens County Gas Light Company.

The Brooklyn Union Gas Company in 1897 acquired the three companies serving the Fourth Ward. The oldest of these is The Jamaica Gas Light Company incorporated June 2, 1856, which operated its own manufacturing plant until ownership passed to the Brooklyn Union Gas Company in 1897, when the plant was leased to the Brooklyn Union Gas Company and operation ceased; the Jamaica Company buying gas since that date from the Brooklyn Union Company. The Woodhaven Company was incorporated September 7, 1871. It never had a manufacturing plant of its own; its operations throughout its history have been limited to the distribution of gas purchased from the Brooklyn Union Gas Company or its predecessors. The Richmond Hill & Queens County Gas

Light Company was incorporated February 24, 1896. Like the Woodhaven Company, it never owned a manufacturing plant, and before the company began operations, it was purchased by the Brooklyn Union Gas Company.

The Brooklyn Union Gas Company acquired the Jamaica and Woodhaven companies, paying for them \$165,000. The Richmond Hill company was acquired for the sum of \$26,758. From the time these companies became part of the Brooklyn Union Gas Company, additions to their property have been financed out of the earnings of the Fourth Ward companies or from advances made by the Brooklyn Union Gas Company. The proprietary corporation throughout this period has supplied all the gas which they distributed to consumers in this territory. The subsidiaries are mere distributing divisions of the Brooklyn Union Gas Company. The three companies constitute practically one. They use a joint office, and for the most part a common staff. Many of the operating expenses are jointly incurred and apportioned among them equally. A considerable part of the expenses that appear on the books of the three companies are merely an allocation of costs incurred by the entire Brooklyn Union system of which they form a small part. The operations of the Fourth Ward companies are thus interwoven among themselves, and are also interconnected with the operations of the Brooklyn Union Gas Company.

The rate for gas in the Fourth Ward of Queens involves for the most part the same problems as the rate for gas in the Second Ward. As in the case of the Newtown Company, the gas delivered to consumers in the Fourth Ward is supplied by the Brooklyn Union Gas Company, and distributed by companies which are mere paper corporations, entirely owned by the Brooklyn Union Gas Company. The price charged by the Brooklyn Union Company for gas, constitutes the major part of the cost of rendering service to consumers in this territory. As in the Newtown case, the rate for gas cannot be determined without passing on the propriety of the Brooklyn Union Gas Company's charge for gas furnished to its subsidiary companies. This point has been fully discussed in connection with the Newtown case; it is not necessary to repeat it. The problems here are similar to those in the Newtown case. We must decide, first, what is the cost of distributing gas by the Fourth Ward companies, including a fair return on their property used in distribution; and second, what is the cost to the Brooklyn Union Company of the

gas supplied to the Fourth Ward companies, including a fair return on the capital used in supplying gas to the Fourth Ward companies.

In ascertaining the reasonable amount to be charged by these companies to cover distribution alone, it is necessary to find first the actual operating expenses and add to the figure so found an amount sufficient to give a fair return on the amount of property used in distribution.

The record contains a statement of distribution, commercial and general expenses for 1913 for the Fourth Ward companies and other companies having approximately similar sales of gas per mile of main. This comparison indicated that the expenses appearing on the books of the Fourth Ward companies were rather high. In 1914 these expenses were substantially the same. On the other hand, taxes and uncollectible bills were reported higher. It will be fair to the company if the expenses as they appear for 1914, namely, 31 cents, are adopted as a basis for calculating expenses for 1915 and 1916. The charge for amortization appearing on the books is far above the depreciation requirement. Mr. Hine, Gas Engineer for the Commission, estimated the annual depreciation requirement on a straight line basis at approximately \$20,000. Part of this depreciation is, however, made good through operating expenses. Thus, under the uniform system of accounts, the replacement of service is treated as repairs. Minor replacements in general are similarly taken care of through operating expenses. Accordingly an allowance of \$17,500 is regarded as ample for 1914, and this amount should be increased by about \$1,500 a year to take care of depreciation on probable additions to property. This means an allowance of less than 3¢ per M for depreciation. These expenses cover not only the cost of supplying gas, but also the expense incidental to the sale of appliances, etc., handled chiefly for the purpose of promoting gas sales. The revenue from this source and other incidental revenues may be estimated at about 2 cents, and may properly be offset against operating expenses. The net operating expenses applicable to the sale of gas are thus approximately 32 cents. A more exact calculation appears in Table I given below.

To the operating expenses for distribution must be added a reasonable return on the value of the property used in distribution. The facts as to the value of this property are similar to those in the Newtown case. The historical record is practically complete in this case as in that, and in each case, appraisals have been made of the

property, the amounts arrived at by the experts reaching a total much higher than the actual cost, as shown by the books. In this case full appraisals were made by Willard F. Hine, Chief Gas Engineer for the Commission, and by Mr. Randolph, Consulting Engineer, appearing for the companies, while an appraisal of mains, services and meters was made by John T. White, superintendent of the street department of the Brooklyn Union and of these subsidiaries. The land was appraised by William P. Rae.

The cost according to the books are shown in Tables II and III. For comparison there is added the appraisals of the engineers for property other than land, and that of William P. Rae for land. Further analysis of these appraisals appears in Table IV. All of the appraisals are far higher than the actual costs on the books. The difference between the appraisal of Mr. Hine and that submitted by Mr. Randolph is, in the main, due to the allowances made by the latter, on a hypothetical basis, for contractors' profits and other overhead expenses. The amounts testified to by Mr. Randolph have no basis in the experience of the companies. This entire subject of overhead allowances has been fully discussed in the Newtown case and need not be repeated here. The conclusions there reached apply equally to the Fourth Ward companies. In details, the appraisal of Mr. Hine differs from those of Mr. White and Mr. Randolph in the treatment of meter installation and the portion of the services paid for by consumers. Mr. Hine does not include in his valuation the proportion of the services paid for by the consumers. This is manifestly just and proper. In regard to meter installation, the practice of the companies has been to treat the cost as part of operating expenses, and this disposition is permitted under the uniform system of accounts. The inclusion of meter installation in the valuation, therefore, involves here, as in the case of the Newtown company, a revision of the figures appearing on the books for operating expenses. The net result of such revision would be to increase profits sufficiently to yield an adequate return on the amount, which, according to the company, should be added to the valuation for installing meters. As in the Newtown case, nothing is gained by departing from the company's accounting practice. Other discrepancies between the appraisals of Mr. Hine and those of Mr. White and Mr. Randolph result from differences in the unit prices and quantities assumed by Mr. Hine and by the other engineers. As regards meters, Mr. Hine's figures might be fairly increased from about \$128,000 to \$130,000. As regards other items, a comparison of

actual costs of construction for recent years, with the estimated cost based on various unit figures submitted, lead to the conclusion that Hine's valuation must be taken as the maximum amount for the cost of reproduction new.

Mr. Hine's appraisal confined itself to the physical property other than land. With the adjustments for meters, Mr. Hine's figure is approximately \$1,132,500. Accepting the companies' claim for the valuation of the land \$30,500, the appraisal of the property new is \$1,163,000. From this sum, depreciation must be deducted. Taking account of the increased allowance for meters, the amount is \$143,635. The net valuation of the physical property is thus in round numbers \$1,020,000.

Further additions must be made for interest during construction and for working capital. On the basis outlined in the Newtown discussion a fair allowance for interest is approximately \$30,000. This amount is here increased to \$50,000 to take account of other overhead items charged to capital, that may not have been specifically provided for. For working capital, an allowance of \$100,000 is here made. The total valuation for the purposes of this case on December 31, 1913, may thus be taken at \$1,170,000. The valuation may be brought down to December 31, 1914, by taking account of the additions made during 1914 as shown by the annual reports to the Commission, and by estimating the accrued depreciation on Mr. Hine's basis. For December 31, 1914, the valuation should be increased to \$1,240,000. The average investment for 1914 would thus be about \$1,200,000.

We must now consider the question of "going value", which must be determined before rates can be established. In accordance with the decision of the highest court of this state (*People ex rel. Kings County Lighting Co. v. Willcox, et al.*, 210 N. Y. 479) a public utility company is entitled to a fair return on its investment from the start, and early deficiencies in a fair return must be made good through later returns. The question, therefore, is whether or not the companies have had a fair return throughout the period. The record in this case shows clearly the initial outlay of the Brooklyn Union Gas Company for the acquisition of the Fourth Ward companies and the additional capital advanced to them from time to time. The policy of the Brooklyn Union Gas Company has been to withdraw only a part of the profits of the subsidiary companies; it has preferred to leave the remainder in the business to be reinvested

in property. In effect, it has taken its profits partly in interest on capital advanced and partly in extensions of its property.

To determine whether a fair return has been earned throughout, the following method has been adopted. The original investment is made the starting point. To this is added new capital advanced to the subsidiaries by the Brooklyn Union Company during the year. On the total average investment for the year a fair rate of return is allowed. From the amount of return, there are deducted interest payments; the remainder is added to the investment. In this way any deficiency in the amount of fair return is treated as part of the investment. The calculation along these lines is repeated year by year. The amount arrived at at the close of any year measures the entire investment in the business, including deficiency in a fair return, if any. The investor should have the amount shown by the calculation in the form of undepreciated property. If he has less, then he has not received a fair return on his investment throughout the period, and he may justly claim an allowance for "going value". If the property is greater than the amount of his investment, then he has received more than a fair return for the period in which his capital has been put to public uses, and no allowance should be made for "going value".

The doctrine of "going value", as expounded in the Kings County Lighting Company case, contemplates that a public utility be, in effect, guaranteed a fair rate of return by the public, and that deficiencies in any year be made good to the company in subsequent years. The investor is protected in his income, the risks assumed by him are minimized. The rate of return to which he is entitled should reflect the safety and high degree of security of the investment. This is only fair to the public. A rate of six per cent under these conditions is reasonable, and seven per cent is generous. A calculation at the rate of six per cent indicates an investment in the Fourth Ward companies to the close of 1913 amounting to \$1,042,660. A similar calculation at the rate of seven per cent indicates an investment of \$1,179,722. These figures make allowance for any deficiencies in return which may not have been made good.

The valuation for the property here indicated is \$1,170,000. This figure excludes certain property owned by the Fourth Ward companies, but not used in their operations, valued by the companies' witness at \$22,000. The total value of the property is thus \$1,190,000. Comparison of the investment, as calculated, and the

valuation of \$1,190,000 here indicated proves that the Brooklyn Union Gas Company, as the owner of the Fourth Ward companies, has had throughout a return of approximately seven per cent. If account were taken of the profits to the Brooklyn Union Company arising from the overcharge on gas supplied to the Fourth Ward companies, the actual return would be even higher. Part of its return the Brooklyn Union Company has taken in interest, the rest it has taken in the form of additions to its property. Early deficiencies in the rate of return, if any, have been made good. There is accordingly no basis for an allowance for "going value".

The value of the property in use during 1914 has been found to be approximately \$1,200,000. This applies, however, to 1914. Any rate now adopted would not be applicable until 1916. Meanwhile sales have been increasing more rapidly than the investment, with the result that as the density of distribution improves, the amount necessary to yield a fair rate of return per thousand cubic feet diminishes. Thus, a liberal estimate is that during 1915 and 1916, the increase of fixed capital, chiefly for mains, meters and services, in excess of accrued depreciation will amount to about \$75,000 a year. On the other hand, past experience would indicate that sales will increase about 12 per cent per year, that is, from approximately 600,000 M cu. ft. in 1914, to 665,000 M cu. ft. in 1915 and 740,000 M cu. ft. in 1916. To be conservative the increase in sales is calculated here on commercial sales alone. This would mean that in 1916 a seven per cent return would involve a charge to the consumers over and above all costs equal to about 13 cents. A 6 per cent return would involve about 11 cents. For reasons more fully set forth in the Newtown case, it seems to me that 7 per cent is a fair rate of return, and indeed a liberal rate of return upon the property used for distribution. The figure of 13¢ may justly be adopted in determining a rate that will not become operative before 1916.

The proper charge to be made by these companies for their own operation should equal the cost of distribution, found to be about 32 cents, plus a charge of about 13 cents for a reasonable return upon their property used for distribution. That is, the Fourth Ward companies should be allowed to charge about 45 cents over and above what is a fair charge for gas sold to these companies by the Brooklyn Union Company.

The determination of the rate for gas in the Fourth Ward will depend largely on the view adopted on the fairness of the price now charged by the Brooklyn Union Gas Company for gas supplied to

its subsidiaries for distribution in the Fourth Ward. The price is 50 cents per thousand cubic feet. It is assumed that 8 per cent of the gas supplied is lost in distribution. Some gas is also used by the company. Thus the cost of the gas actually delivered to customers is about 54.5 cents per thousand cubic feet sold. This is far more than one-half of the total cost, as reported by the companies, for supplying gas to the residents of the Fourth Ward. The price charged is apparently arbitrary. It is applied to all subsidiaries of the Brooklyn Union Gas Company without regard to special conditions of service. Thus, the Newtown and the Fourth Ward companies are alike charged 50 cents per thousand cubic feet, although the Newtown Company has its own holder, while the Fourth Ward companies have none.

In the Newtown case an analysis of the data indicated that the cost of furnishing gas to that company was about forty cents. The Newtown supplied and operated its own holders. In the light of the Newtown record, operating expenses, including depreciation applicable to the holder property, together with a return of seven per cent on the investment therein, would involve an additional charge of about four cents. The price for gas to the Fourth Ward companies should thus be about four cents higher than the price to the Newtown Company. This would justify a charge to the Fourth Ward companies of forty-four cents. The cost per thousand cubic feet of gas delivered to their customers, allowing 8 per cent for transmission losses would accordingly be about 48 cents, or $6\frac{1}{2}$ cents less than the figures now reported as the cost of gas sold by the Fourth Ward companies.

The statement submitted in this case in justification of the 50 cent charge to the Fourth Ward companies is as follows:

Production expenses	34.00 cents
General expenses, representing proportion of fire and liability insurance, general administration of plant, accidents and damages, contingencies, cost of pumping the gas to the 4th Ward	3.75
Taxes	2.25

Reserves against depreciation, re- newals, contingencies and other items mentioned in the rule filed with the Commission....	5.00
	<hr/>
	45.00
Return on investment.....	5.00
	<hr/>
Total	50.00 cents

It is the contention of the company that the 50 cent rate made to the subsidiary companies is inadequate, that it allows a profit of but 5 cents and yields a return on the investment of no more than 3 per cent on the capital investment.

The accuracy of the details in the statement submitted is open to serious doubt. Thus, production expenses are given as 34 cents. The fifty cent charge for gas supplied to subsidiaries has been in effect since 1909. The Brooklyn Union Gas Company has throughout this period rendered to the Commission annual reports covering in detail its production expenses. From these it appears that in no year was the cost as high as 34 cents, and in any event the cost in any one year could not be used to justify a rate that has been in effect for six years or more. The highest figure reached was 31.2 cents in 1913; in two of the six years the cost was about 25½ cents, and in two years about 24½ cents. The discussion of production expenses in connection with the Newtown case has indicated that a reasonable figure for production costs is about 26 cents.

The amount submitted for general expenses and the cost of pumping gas to the Fourth Ward, 3.75 cents, is not supported by the annual reports submitted to the Commission. These would indicate a figure applicable to production, storage, and transmission nearer to two cents. The amount entered for depreciation, etc., viz. 5 cents, appears to be excessive. In the Newtown case the amount submitted was equal to 3.6 cents. If account is taken of the investment in holders on the basis of the Newtown record, the proper figure would be nearer to 4 cents.

It was contended that the 50 cent charge left to the Brooklyn Union Company only five cents, or about 3 per cent on the capital devoted to the production of gas. No adequate data were produced in support of this assertion. In the Newtown case, it was claimed

that the investment used for the production of gas was equal to 90 cents per thousand cubic feet of gas made. The Newtown record indicates that the investment in holder property was equal to about 32 cents per thousand cubic feet of gas supplied to that company. The total investment for the manufacture and storage of gas would thus be about \$1.22 per thousand feet of gas furnished by the Brooklyn Union Company. This involves a charge for return on the investment equal to 7.3 cents per thousand cubic feet of gas on the basis of 6 per cent as a fair return, or 8.5 cents, on the assumption that 7 per cent is the proper rate of return.

An adjustment of the figures in the statement of Brooklyn Union costs, in the light of the data here mentioned on production expenses and on property investment, makes it appear that a fair rate for gas supplied to the Fourth Ward companies is about 43 or 44 cents. This is the rate indicated above by a comparison of conditions of supplying gas to the Newtown and the Fourth Ward companies. A charge of 44 cents for gas supplied to the Fourth Ward companies means that after deducting distribution losses and gas used by the company, the cost for gas delivered to their customers is about 48 cents per thousand cubic feet or $6\frac{1}{2}$ cents less than the cost of the basis of the present fifty cent charge.

Summarizing the foregoing discussion, we find, that on the basis of a fair charge by the Brooklyn Union for gas supplied to the customers of the Fourth Ward companies, the cost at the consumers' meter is approximately 48 cents. The expense of distribution is about 32 cents to which should be added 13 cents to provide a fair return on the property used by the companies for the benefit of the consumers. These calculations are based on total sales. In arriving at a rate, it must be borne in mind that the price to be fixed applies only to gas sold to private consumers, the rate to the city being unaffected by these proceedings. Taking this fact into account, a fair rate for gas sold to private consumers is 95 cents.

More detailed calculations are given below to show the return to the Fourth Ward companies under a rate of 95 cents and under a rate of \$1.00. From these it appears that a dollar rate yielded in 1914 a return of more than 9 per cent and would yield in 1916 more than 10 per cent. Such earnings are manifestly excessive and should be reduced. A rate of 95 cents will yield to the companies an adequate return and make fair allowance for contingencies and surplus.

I believe therefore that this reduction to 95 cents per thousand cubic feet should be ordered to take effect January 1, 1916.

(STRAUS, *Chairman*, HODGE, WHITNEY and HERVEY, *Commissioners*, concurring).

Estimated Earnings under a rate of 95¢ for gas sold to Private Consumers.

	1914	1915	1916
Gas Bought and Sold (M cu. ft.):			
Gas bought (a).....	651,605	724,924	806,763
Gas sold—commercial	560,205	627,430	702,722
municipal	36,975	37,000	37,000
Total sold	597,180	664,430	739,722
Revenue:			
Gas sales—commercial at 95¢ per M			
cu. ft.	\$532,194	596,058	\$667,586
do. —municipal at 75¢ per M cu.			
ft.	27,731	27,750	27,750
Miscellaneous (incl. rent).....	13,081	13,100	13,100
Total	\$573,006	\$636,908	\$708,436
Operating Expenses:			
Gas purchased at 44¢ per M cu. ft.			
bought (a)	\$286,706	\$318,966	\$354,975
Distribution, commercial, general, etc.			
at 31.05¢	185,458	206,306	229,682
Depreciation, estimated	17,500	19,000	20,500
Total	\$489,664	\$544,272	\$605,157
Operating income	\$83,342	\$92,636	\$103,279
Valuation of property (average for year).....	\$1,205,000	\$1,280,000	\$1,355,000
Rate of return on Valuation of Property			
(average for year)	6.91%	7.24%	7.62%

(a) Allowing for losses in distribution and for gas used by companies.

Estimated Earnings under Rate of \$1.00 for gas sold to Private Consumers.

	1914	1915	1916
Gas Bought and Sold (M cu. ft.):			
Gas bought (a)	651,605	724,924	806,763
Gas sold—commercial	560,205	627,430	702,722
—municipal	36,975	37,000	37,000
Total sold.....	597,180	664,430	739,722
Revenue:			
Gas sales—commercial at \$1.00 per M cu. ft.	\$560,205	\$627,430	\$702,722
do. —municipal at 75¢ per M cu. ft.	27,731	27,750	27,750
Miscellaneous (incl. rent)	13,081	13,100	13,100
Total	\$601,017	\$668,280	\$743,572
Operating expenses:			
Gas purchased at 44¢ per M cu. ft. bought (a)	\$286,706	\$318,966	\$354,975
Distribution, commercial, general, etc. at 31.05¢	185,458	206,306	229,682
Depreciation estimated	17,500	19,000	20,500
Total	\$489,664	\$544,272	\$605,157
Operating income	\$111,353	\$124,008	\$138,415
Valuation of property (average for year) ..	\$1,205,000	\$1,280,000	\$1,355,000
Rate of return:			
Valuation of property (average for year) ..	9.24%	9.69%	10.21%

(a) Allowing for losses in distribution and for gas used by companies.

TABLE I.

Fourth Ward Companies.
Gas Sold and Cost of Distributing Gas, 1914.
A—Sales of Gas

Commercial	560,205	M cu. ft.
Municipal	36,975	" " "
Total.....	<u>597,180</u>	" " "

B—Cost of distributing gas—

	Amount	Cents per M cu. ft. gas sold
Distribution expense (a)	\$74,651	
Deduct, materials recovered from consumers' premises, charged originally to expense	1,628	
	<u>\$73,023</u>	12.22
Commercial expense	51,288	8.59
General expense	<u>\$36,865</u>	
Add—rent of branch office and cost of maintaining main office building.....	3,247	
	<u>40,112</u>	6.72
Depreciation, estimated	17,500	2.93
Taxes	17,552	2.94
Uncollectible bills	<u>3,483</u>	.58
Total.....	<u>\$202,958</u>	33.98
Deduct—miscellaneous revenue (including rent)...	<u>13,081</u>	2.19
Net cost of distribution	<u><u>\$189,877</u></u>	<u><u>31.79</u></u>

(a) After deducting income from Municipal lamp repairs.

Fourth Ward Companies.

TABLE II.

PROPERTY INCLUDING INTEREST DURING CONSTRUCTION AND WORKING CAPITAL LESS DEPRECIATION—FOURTH WARD COMPANIES
(Cost as per books and appraisal by Commission's Gas Engineer, Dec. 31, 1913, and 1914.)

	1913		1914	
	Cost as per books	Appraisal Hine	Cost as per books	Appraisal Hine (h)
Distribution system	\$961,597	\$1,037,176	\$1,054,332	\$1,129,911
General equipment, etc.	13,559	13,630	14,016	14,086
Structures—Union Ave. (a)	68,774	64,183	68,960	64,370
Structures—Beaver St.	(b) 1,718	1,718	(b) 1,718	1,718
Total fixed capital (excl. land)	\$1,045,648	\$1,116,707	\$1,139,026	\$1,210,085
Less accrued depreciation	202,073	140,000	251,173	162,000
Net fixed capital (excl. land)	\$843,575	\$976,707	\$887,853	\$1,048,085
Land—Union Ave.	18,050	(g) 22,500	18,050	(g) 22,500
Land—Beaver St.	(c) 8,000	(g) 8,000	(c) 8,000	(g) 8,000
Total fixed capital (incl. land)	\$869,625	\$1,007,207	\$913,903	\$1,078,585
Interest during construction, etc.	(d) 50,000	(d) 50,000	(d) 50,000	(d) 50,000
Net current assets—excess over liab.	(e) 85,648	(f) 100,000	(e) 118,927	(f) 100,000
Total	\$1,005,273	\$1,157,207	\$1,082,830	\$1,228,585

(a) The amount for General Structures contains several items included by Mr. Hine in General Equipment. (b) Not shown separately on books. Mr. Hine's figure for Beaver St. structure here taken. (c) Now shown separately on books. Mr. Rae's figure for portion of Beaver St. site used by subsidiaries here taken. (d) Estimated. (e) Represents excess of current assets over current liabilities. (f) Working capital requirement estimated on basis of operating expenses, materials and supplies, etc. (g) Appraisal of Wm. P. Rae. (h) Appraisal of Dec. 31, 1913, increased by additions made during 1914 as per books, less depreciation accrued during 1914 estimated at \$22,000.

TABLE III.
COST OF PROPERTY AND APPRAISALS
December 31, 1913.

	Cost as per books (a)	Appraisals		
		Hine	Randolph	White (f)
Mains	\$737,810	\$799,725	\$1,052,321	\$838,437
Services	95,478	123,301	257,902	196,561
Meters	(b) 128,309	114,150	239,823	182,324
Total dist. system	\$961,597	\$1,037,176	\$1,550,046	(g) \$1,217,322
General equipment	10,709	13,315	10,709	
Gas tools and implements	2,850	315	.....
General structures, Union Ave.	68,774	64,183	88,215	
General structures, Beaver and Church Streets. ....	.....	1,718	3,608	
Total (excl. land)	\$1,043,930	\$1,116,707	\$1,652,578	(g) 1,353,671
Land:				
Union Avenue	18,050	.....	(c) 22,500	
Beaver and Church Streets .....	.....	.....	(d) 8,000	
Total	\$1,061,980	.....	\$1,683,078	

(a) Exclusive of property on Beaver and Church Sts. leased to the Brooklyn Union Gas Co. and used only to a small extent by the Fourth Ward companies. (b) The amount of \$1,563 should be added for meters undercharged on the books. (c) Appraisal of Wm. P. Rae. (d) Appraisal of Wm. P. Rae for proportion used by Fourth Ward companies. (e) Excludes certain "doubtful" items for clerical and supervisory labor. (f) Includes certain doubtful items for clerical and supervisory labor. (g) Exclusive of paving over mains and services.

Fourth Ward Companies.

TABLE IV.

ANALYSIS OF APPRAISALS OF PROPERTY EXCLUSIVE OF LAND, DEC. 31, 1913.

Distribution System	Hine	Randolph	White
Mains	\$768,974	\$787,719	\$838,438
Services	156,932	187,661	196,561
Meters	114,151	(a) 127,684	124,693
Meter installation	(b)	56,304	57,631
Total.....	\$1,040,057	\$1,159,368	\$1,217,323
Paving over mains and services.	41,479	17,213	(c) 17,213
Total—Basic figure....	\$1,081,536	\$1,176,581	(d) \$1,234,536
General contractors' profit.....	(e)	(f) 116,708	
Overhead	(g)	(h) 256,757	
Total (incl. percentage additions)	\$1,081,536	\$1,550,046	
Deduct payments by consumers on account of services.....	44,358	(i)	(i)
Total—Dist. system.....	\$1,037,178	\$1,550,046	
General Structures			
Union Avenue buildings.....	(j) \$64,183	(k) \$71,062	
Beaver Street structures.....	(l) 1,719	(k) 3,007	
General equipment	13,315	(m) 13,159	
Tools and implements.....	315	.....
Total.....	\$79,532	\$87,228	
Overhead	(n)	(o) 15,304	
Total—General structures....	\$79,532	\$102,532	
Total fixed capital (excl. land)	\$1,116,710	\$1,652,578	

- (a) Includes \$9,500 meters in stock to which no contractors' profit or overhead has been added.
- (b) Treated by companies as operating expenses and not capitalized.
- (c) Randolph's estimate for paving.
- (d) To include doubtful items, \$136,340 should be added.
- (e) Contractors not employed as a rule for construction.
- (f) Equals 10 per cent of basic figures for labor and materials.
- (g) Treated by companies as operating expenses and not capitalized.
- (h) Equals 20 per cent of the amount for labor and material and general contractors' profit.
- (i) White and Randolph make no allowance for consumers' contributions.
- (j) Includes 10 per cent for contingencies and 10 per cent for engineering and superintendence.
- (k) Includes 10 per cent general contractors' profits.
- (l) Includes 10 per cent for engineering and superintendence.
- (m) Of this, \$10,709 is the book figure for general equipment, to which no percentage additions have here been made; the difference, \$2,450, includes additions and represents items on books in structures account.
- (n) Treated by companies as operating expenses and not capitalized.
- (o) Equals 20 per cent of the amount for labor and material and general contractors' profit.

In the Matter of the Hearing on the Motion of the Commission on the Question of Improvements, Changes and Additions in and to the Existing Structure of THE LONG ISLAND RAILROAD COMPANY on its Atlantic Division.

CASE No. 1918

Safety Precautions at Street Crossings—Railroad Corporations—Erection of Wall at Sackman Street Not Required—Former Order Abrogated.—It appearing that the iron railing existing at the intersection of the right of way of The L. I. R. R. with Sackman Street in the Borough of Brooklyn, is effective to prevent accidents to vehicles thereat, an Order will be entered abrogating a former Order requiring a wall at said intersection.

Hearings closed May 15, 1916. Opinion adopted May 25, 1916.

This proceeding was upon the motion of the Commission and was started by the adoption on March 5, 1915, of a Resolution directing a hearing to determine whether The Long Island Railroad Company should be required to provide safety precautions at the points of intersection of the Atlantic Division with Howard Avenue and with Sackman Street, in the Borough of Brooklyn.

A separate proceeding was thereafter started in the Howard Avenue crossing in Case No. 1959, and on December 7, 1915, the Commission entered an Order, pursuant to an Opinion adopted therein, directing The Long Island Railroad Company to erect a wall on the north side of its right of way at Howard Avenue similar to the one existing at the south side thereof.

On December 17, 1915, the Commission entered an Order in Case No. 1918 requiring the company to erect a barrier at the intersection of the Atlantic Division with Sackman Street similar to the one required at Howard Avenue. In a communication addressed to the Commission on April 14, 1916, the company requested a rehearing as to the Sackman Street crossing, which was granted by Resolution adopted May 4, 1916.

On May 25, 1916, the Commission, pursuant to an Opinion of Commissioner Hodge adopted on that day, entered an Order abrogating the Order of December 17, 1915.

For the Order and Opinion of December 7, 1915, in Case No. 1959, see 6 P. S. C. R. (1st Dist. N. Y.) 315.

H. M. Chamberlin, for the Commission.

Lamar Hardy, by *William J. Clarke*, for the City of New York.

C. L. Addison, for The Long Island Railroad Co.

HODGE, *Commissioner*: The Order in this Case adopted December 17, 1915 directed the Company to erect a barrier at Sackman Street similar to the barrier erected by the Company at Howard Avenue, pursuant to the Order of this Commission (Case #1959). The iron railing now in place along the structure across Sackman Street shows no indication that it has ever been struck by moving vehicles. Sackman Street is not a through street, being but one block long, and there is no through traffic, or any rapidly moving vehicles whatever, such as is the case in Howard Avenue, which is a through street. Practically the only traffic on Sackman Street consists of delivery wagons.

In view of these conditions it would appear that no barrier is necessary other than the iron railing now in place.

(STRAUS, *Chairman*, WHITNEY, HAYWARD and HERVEY, *Commissioners*, concurring).

In the Matter of the Application of THE BROOKLYN HEIGHTS RAILROAD COMPANY for permission and approval of the Commission, under Section 53 of the Public Service Commissions Law, of the construction and operation of an extension of its street surface railroad from Island Avenue (Avenue N), through private property to Flatbush Avenue, in the Borough of Brooklyn, City of New York.

CASE NO. 2043

Franchises and Privileges—Street Railroad Corporations—Extensions on Private Property—Franchise from Local Authorities not Required.—For the approval by the Commission under Section 53 of the Public Service Commissions Law of the operation of an extension of a street surface railroad on private property a franchise from the local authorities is not required under Section 171 of the Railroad Law.

Franchises and Privileges—Extensions of Street Railroad Corporations—Limited use of Extension not Incompatible with Public Convenience and Necessity.—An application by The Brooklyn Heights Railroad Company for the approval of an extension on private property will not be denied as incompatible with public convenience and necessity because said extension would serve only persons employed in factories adjacent thereto.

Franchises and Privileges—Extensions of Street Railroad on Private Property—Perpetual Right, an incidence of Private Property, Not Preventible by Commission as against Public Policy—Legislative Intent Subservied by Approval of Application.—The contention of the City Authorities that the approval of an extension of a street surface railroad on private property in the absence of a local limited term franchise for the same is against public policy, as a grant of a perpetual right, cannot be sustained in view of the failure of the legislature to enact a proposed amendment to the City Charter so as to require a local franchise for such an extension, and the failure of legislative action may well be interpreted by the Commission as a certain indication of legislative intent.

Hearings closed April 17, 1916. Order entered May 25, 1916.

This proceeding was upon the application of The Brooklyn Heights Railroad Company for the approval of the extension of its street surface railroad on private property from Island Avenue (Avenue N) to Flatbush Avenue, and was started by the adoption of an Order on December 1, 1915, directing a hearing in the matter.

On May 25, 1916, the Commission entered an Order granting the application by an affirmative vote of Commissioners Hayward, Hodge, Whitney and Hervey, Chairman Straus not voting.

On June 5, 1916, Commissioner Whitney filed an Opinion in support of the action of the Commission.

The Order entered by the Commission was in part as follows:

ORDERED that the permission and approval of this Commission be and it hereby is granted to The Brooklyn Heights Railroad Company for the construction and operation of an extension of its street surface railroad in and upon the following route in the Borough of Brooklyn, City of New York:

BEGINNING at the intersection of Island Avenue (Avenue N) and Ralph Avenue and running thence along Ralph Avenue (now private property) to Mill Avenue; thence along Mill Avenue (now private property) to Kemble Avenue; and thence along Kemble Avenue (now private property) to a point opposite the main entrance of the property of the Gulf Refining Company, said extension being approximately 3,500 feet in length and being shown by an unbroken red line upon the map received in evidence as Applicant's Exhibit No. 4 at the hearing had in this matter.

Edward M. Deegan, for the Commission.

D. A. Marsh, for the applicant.

Lamar Hardy, by William J. Clarke, for the City of New York.

Cannon, Siebert & Riggs, by R. E. T. Riggs, for Atlantic, Gulf and Pacific Company and National Lead Company.

TRAVIS H. WHITNEY, Commissioner: The Brooklyn Heights Railroad Company applies for a certificate, under Section 53 of the

Public Service Commissions Law, which provides that the permission and approval of the Commission must be had to the "construction of a railroad or street railroad or any extension thereof", or to the exercise of a "franchise or right under any provision of the Railroad Law or any other Law".

The Railroad Law, Section 170 provides:

"Any street surface railroad corporation at any time proposing to extend its road, or to construct branches thereof, may from time to time make and file in each of the offices in which its certificate of incorporation is filed a statement of the names and description of the streets, roads, avenues, highways and private property in or upon which it is proposed to construct, maintain or operate such extensions or branches."

In case an extension for which such a certificate is filed is for a route on a street or other public way, the Company must obtain, as provided in Section 171 of the Railroad Law, the consents of the local authorities and of the property owners. In this case, however, the proposed route does not traverse any such street or other public way and, accordingly, the provisions of the said Section 171 do not appear to apply. The Company has obtained title to the private property over which it proposes to construct its extension and there remains only the question as to whether, under Section 53 of the Public Service Commissions Law, public convenience and a necessity would be served by such construction and operation.

The testimony shows that this line will be of use mainly to the employees of three different industrial plants located near its terminus, where between two hundred and fifty and three hundred men are employed. It has been contended in opposition to the granting of this certificate that the extension would be for the benefit of one concern and, therefore, does not represent any matter of public convenience and necessity. That concern, however, will not ride in the cars nor will it pay the fares of its employees. So far as the matter of railroad operation is concerned, they are prospective passengers without regard to their employment by one or more concerns.

It has been contended with some force that the Commission, as a matter of public policy, should withhold its certificate on the ground that its grant would confirm to the Company the right to maintain and operate an extension in perpetuity. This is based on the fact

that the Company either owns or may own the fee or a permanent easement to the land upon which the tracks would be laid, and that if the Commission allows such construction and subsequent operation no public authority can thereafter question the permanency of such operation.

This case has remained undetermined for some time at the request of The City of New York. During this time the City, which opposes the granting of the certificate, had introduced in the Legislature a Bill amending the City charter so as to require the Company, under such circumstances as these, to secure a franchise from the local authorities, who, by the terms of the charter, are prohibited from granting a franchise for more than twenty-five years. The Legislature failed to enact such an amendment to the charter. The situation presented by such a state of facts as these has been known to the City authorities for several years. Their failure to secure the proposed amendment to the charter may well be interpreted by this Commission as a certain indication of legislative intent.

In expression of the attitude of the City there was presented to the Commission a report with recommendations from its Committee on Franchises approved by the Board of Estimate and Apportionment on February 18, 1916. The first recommendation is as follows:

"That there be presented to the Public Service Commission of the First District, the view of the Board of Estimate and Apportionment that sound public policy would not be conserved by the granting of any certificate to the applicant railroad company which would ultimately result in the establishment of what would be a perpetual street railroad franchise within the limits of The City of New York, but at the same time that there be expressed to that Commission, the opinion of the Board of Estimate and Apportionment that under the facts in this case and under existing statutes, that Board has no power in the premises, and that the responsibility of taking action which would result in the possession of such a perpetual franchise for street railroad purposes, if taken, must be assumed by the said Public Service Commission."

In my opinion and as I indicated to the Assistant Corporation Counsel at the last argument on this matter, the City is not taking an entirely consistent attitude on the matter of the creation of

perpetual franchises through the obtaining by a Company of the right to construct and operate under the terms of a permanent easement, for the City, at the same time that it opposed this certificate herein in an undeveloped and outlying portion of the City where the right, even if it is to be perpetual, will never be of importance, is proposing to grant to the New York Central and Hudson River Railroad Company permanent easements in real estate owned by the City along the West Side of Manhattan, the effect of which will be the grant of a perpetual franchise to the Central Company over such right of way. The only difference that I can see between the creation of a perpetual franchise by the granting of a permanent easement from a private property owner to a railroad corporation, as compared with the granting by a municipal corporation of a permanent easement or of the fee in property owned by such City to a railroad corporation, is that the latter is much more in violation of sound public policy, particularly when a municipal charter restricts the granting of a franchise if it is laid out on streets or public highways to a grant of twenty-five years. Such a public policy should control the City not only in the grant of a franchise but also in the grant of an easement.

As the Company has the necessary right required by Section 170 of the Railroad Law and public convenience and a necessity would be served, in my opinion a certificate should issue in this case.

MANHATTAN BRIDGE THREE CENT LINE, Complainant, against THE BROOKLYN AND NORTH RIVER RAILROAD COMPANY, Defendant. Route, service and rates of fare between the termini of the Manhattan Bridge.

CASE No. 2063

Franchise Restrictions—Street Railroad Corporations—Through Operation to Fulton Street Required.—Upon a complaint of the Manhattan Bridge Three Cent Line against unlawful competition practised by the respondent in the operation of three cent cars over the Queensboro Bridge to the injury of the Complainant it appeared that in order to safeguard the business of the latter, the franchise granted to the respondent prohibited it (1) from operating any cars over the Queensboro Bridge exclusively for a purely local service; (2) from operating a route ending at either terminal of the bridge; (3) from charging a rate of fare for any passenger of less than five cents "for one continuous ride upon any part of the route authorized where said route is identical with the route upon which cars shall be operated by the Manhattan Bridge Three Cent Line;"

(4) from charging more than 3 cents for a single trip or 5 cents for a round trip between the termini of the Manhattan Bridge; and that notwithstanding said franchise provisions the respondent was operating three cent cars from the Borough of Manhattan to Concord Street, Brooklyn, where said cars were turned back. HELD, that said operation is in violation of the terms of the franchise; that all cars should be operated through to Fulton Street, Brooklyn, and that except for rides between the Borough of Manhattan and the Brooklyn terminal of the Manhattan Bridge, passengers should be charged a rate of fare of five cents per ride.

Franchise Restrictions—Street Railroad Corporations—Three Cent Short Line Service from Broadway, Manhattan, to Brooklyn Terminal of Manhattan Bridge Not in Violation of Franchise.—The establishment by the respondent of a three cent short line service from Broadway or Center Street, Manhattan, to the Brooklyn terminal of the Manhattan Bridge, although morally reprehensible as unfair competition with the local bridge service of the Manhattan Bridge Three Cent Line, is not in violation of the terms of the franchise and cannot be prevented by the Commission.

Hearings closed April 17, 1916. Opinion adopted June 1, 1916.

This proceeding was upon the complaint of the Manhattan Bridge Three Cent Line and was started by an Order entered by the Commission on February 10, 1916, directing a hearing in the matter.

On June 1, 1916, the Commission unanimously adopted an Opinion of Commissioner Hayward and entered an Order as follows:

The complainant, Manhattan Bridge Three Cent Line, having heretofore duly filed its complaint herein against the defendant, The Brooklyn and North River Railroad Company, and this Commission having by order made February 10th, 1916, directed that the matters complained of be satisfied or that the charges be answered by defendant, and an answer to said complaint having been duly filed and the Commission by order dated April 6, 1916, having directed that a hearing be had and the hearing having been duly held before the Commission on April 17, 1916, Latson & Tamblin, by Almet Reed Latson, of Counsel, appearing for complainant, C. L. Woody appearing for the defendant, Arthur G. Peacock appearing for New York Railways Company, and the Commission having investigated the matters complained of and it appearing that The Brooklyn and North River Railroad Company has been and is operating a local service between a point in the Borough of Manhattan at Centre Street and Canal Street and a point in the Borough of Brooklyn at Bridge Street and Flatbush Avenue Extension, and that such operation is prohibited by and contrary to the terms and conditions of the franchise under which The Brooklyn and North River Railroad Company operates and of the contract between The City of New York and The Brooklyn and North River Railroad Company, dated September 9, 1913; and it further appearing that The Brooklyn and North River Railroad Company has been and is receiving passengers at various points on Canal Street, in the Borough of Manhattan, City of New York, west of the Manhattan Terminal of the Manhattan Bridge and transporting such passengers to the Brooklyn Terminal of the Manhattan Bridge, or to various points east of said Brooklyn Terminal, for a rate of fare less than five cents for one continuous ride, and that such operation also is prohibited by and contrary to the terms and conditions of

the franchise under which the Brooklyn and North River Railroad Company operates and of the contract between The City of New York and The Brooklyn and North River Railroad Company, dated September 9, 1913; and it further appearing that The Brooklyn and North River Railroad Company has been and is receiving passengers at the Manhattan Terminal of the Manhattan Bridge and transporting such passengers to various points in the Borough of Brooklyn beyond the Brooklyn Terminal of the Manhattan Bridge, for a rate of fare less than five cents for one continuous ride, and that such operation also is prohibited by and contrary to the terms and conditions of the franchise under which The Brooklyn and North River Railroad Company operates and of the contract between The City of New York and The Brooklyn and North River Railroad Company, dated September 9, 1913; and it further appearing that the said The Brooklyn and North River Railroad Company is now, and has been receiving passengers at various points on Flatbush Avenue Extension east of the Brooklyn Terminal of the Manhattan Bridge, in the Borough of Brooklyn, City of New York, and transporting such passengers to the Manhattan Terminal of the Manhattan Bridge or to various points west of said Manhattan Terminal at a rate of fare less than five cents for one continuous ride, and that such operation is prohibited by and contrary to the terms and conditions of the franchise under which The Brooklyn and North River Railroad Company operates and of the contract between The City of New York and The Brooklyn and North River Railroad Company, dated September 9, 1913; and it further appearing that the said The Brooklyn and North River Railroad Company is now, and has been receiving passengers at the Brooklyn Terminal of the Manhattan Bridge and transporting such passengers to various points in the Borough of Manhattan beyond the Manhattan Terminal of the Manhattan Bridge for a rate of fare less than five cents for one continuous ride, and that such operation is prohibited by and contrary to the terms and conditions of the franchise under which The Brooklyn and North River Railroad Company operates and of the contract between The City of New York and The Brooklyn and North River Railroad Company, dated September 9, 1913; and it further appearing that the said The Brooklyn and North River Railroad Company is now and has been so operating its cars as to permit passengers to be transported over the Manhattan Bridge and beyond the termini thereof without exacting the payment of any fare in excess of three cents, and that such operation also is prohibited by and contrary to the terms and conditions of the franchise under which The Brooklyn and North River Railroad Company operates and of the contract between The City of New York and The Brooklyn and North River Railroad Company, dated September 9, 1913;

NOW, THEREFORE, IT IS

ORDERED that The Brooklyn and North River Railroad Company forthwith abate each and every violation of its contract with The City of New York dated September 9, 1913, and

(1) That The Brooklyn and North River Railroad Company forthwith discontinue the operation of any of its cars between the termini of the Manhattan Bridge for a purely local service;

(2) That The Brooklyn and North River Railroad Company forthwith discontinue receiving passengers at any point on Canal Street in the Borough of Manhattan, City of New York, west of the Manhattan Terminal of the Manhattan Bridge and transporting such passengers to the Brooklyn Terminal of the Manhattan Bridge, or to any points east of said Brooklyn Terminal, for a rate of fare less than five cents for one continuous ride;

(3) That The Brooklyn and North River Railroad Company

forthwith discontinue receiving passengers at the Manhattan Terminal of the Manhattan Bridge and transporting such passengers to any point in the Borough of Brooklyn beyond the Brooklyn Terminal of the Manhattan Bridge for a rate of fare of less than five cents for one continuous ride;

(4) That The Brooklyn and North River Railroad Company forthwith discontinue receiving passengers at any point on Flatbush Avenue Extension, east of the Brooklyn Terminal of the Manhattan Bridge in the Borough of Brooklyn, City of New York, and transporting such passengers to the Manhattan Terminal of the Manhattan Bridge, or to any points west of said Manhattan Terminal, at a rate of fare of less than five cents for one continuous ride;

(5) That The Brooklyn and North River Railroad Company forthwith discontinue receiving passengers at the Brooklyn Terminal of the Manhattan Bridge and transporting such passengers to any point in the Borough of Manhattan beyond the Manhattan Terminal of the Manhattan Bridge for a rate of fare of less than five cents for one continuous ride;

(6) That The Brooklyn and North River Railroad Company forthwith discontinue so operating its cars as to permit passengers to be transported over the Manhattan Bridge and beyond the termini thereof for a rate of fare of less than five cents for one continuous ride.

Arthur DuBois, for the Commission.

Latson & Tamblyn, by *Almet Reed Latson*, for the Manhattan Bridge Three Cent Line.

C. L. Woods, for The Brooklyn and North River Railroad Co.

HAYWARD, Commissioner: This is a proceeding on the complaint of the Manhattan Bridge Three Cent Line asking that the Commission order the Brooklyn & North River Railroad Company to discontinue certain phases of its operation which are claimed to be contrary to the terms of its franchise. The facts are as follows:

The Manhattan Bridge Three Cent Line has a franchise permitting it to operate cars from the Manhattan terminal of the Manhattan Bridge across the bridge and through the Flatbush Avenue Extension to Fulton Street, a distance of approximately two miles. The Brooklyn & North River Company has a franchise by which it operates cars from Desbrosses Street Ferry in Manhattan through various streets to the Manhattan Bridge and from there across the bridge and through the Flatbush Avenue Extension to Fulton Street.

The Manhattan Bridge Three Cent Line was the first line to apply for a franchise to operate cars across the Manhattan Bridge, making this application in 1912, after all efforts on the part of the city authorities had failed to procure an application for such a

- franchise from any of the existing railroads. The franchise of the Manhattan Bridge Line was granted on July 10, 1912. Thereafter the Brooklyn and North River Railroad Company was formed and the stock thereof was divided equally among the Third Avenue Railway Company and the New York Railways Company, the two large street railway companies in New York, and the Brooklyn Heights Railroad Company and the Coney Island & Brooklyn Railroad Company, the two large companies in Brooklyn. The last two have since come under one control.

In the latter part of 1913 the Brooklyn & North River Company obtained a franchise for its present operation, but in that franchise were inserted certain provisions which had the evident purpose of protecting *from ruinous competition* the Manhattan Bridge Line which had enabled the bridge to be opened to traffic. These provisions of the Brooklyn & North River franchise are as follows:

"The company hereby agrees that it shall not operate any cars exclusively for a purely local service between the termini of the Manhattan Bridge, and further agrees that the route of none of the cars operated by the company shall end at either terminal of said Manhattan Bridge.

"The rate of fare for any passenger on the Railway hereby authorized shall not exceed five cents and the company shall not charge any passenger more than five cents for one continuous ride from any point on its road, or from any road, line or branch operated by it or under its control, to any other point thereof, or any connecting branch thereof within the limits of the City.

And the company shall not charge a rate of fare for any passenger of less than five cents for one continuous ride upon any part of the route hereby authorized where said route is identical with the route upon which cars shall be operated by the Manhattan Bridge Three Cent Line by virtue of its franchise granted by contract dated July 10, 1912, without the consent of the Board, except that the company shall and must charge a fare of but 3 cents for a single ride between the termini of the Manhattan Bridge and shall and must sell tickets for two of such rides between the termini of said Bridge in either direction for 5 cents."

"It also stated in the franchise that it is: "the intention and of the essence of this contract....."

That the railway hereby authorized shall be operated as part of a continuous line from Fulton Street, Brooklyn, to Desbrosses Street Ferry, Manhattan."

On December 13, 1915 the Brooklyn & North River Company inaugurated a service from Broadway or Center Street in Manhattan, which are respectively a little more and a little less than 2000 feet west of the Manhattan end of the Bridge, to Concord Street, Brooklyn, which is 694 feet east of the Brooklyn end of the Bridge. The rate of fare charged upon cars making this trip is 3¢, two tickets being sold for 5¢.

It is also claimed and seems to be borne out by the evidence that the Brooklyn & North River Company do not make a reasonable effort to see that passengers carried at the local rate of 3¢ from the Manhattan end of the Bridge do not continue beyond the Brooklyn end of the bridge, but on the contrary are, where they desire it, almost universally carried through the Flatbush Avenue Extension all the way to Fulton Street, Brooklyn.

Both of these phases of the Brooklyn and North River operations are claimed to be contrary to the provisions of its franchise.

An examination of the terms of the Brooklyn & North River franchise above quoted shows that that company is prohibited:

1. From operating any cars "exclusively for a purely local service".
2. From operating a route which shall end at either terminal of the bridge.
3. From charging a rate of fare for any passenger of less than 5¢ "for one continuous ride upon any part of the route authorized where said route is identical with the route upon which cars shall be operated by the Manhattan Bridge Three Cent Line."
4. From charging more than 3¢ (or 2½¢ where two tickets are bought) for a single ride between the termini of the Manhattan Bridge.

The identical portions of the two lines are (1) that across the Manhattan Bridge, a distance of a little over a mile, and (2) that from the Brooklyn end of the Bridge to Fulton Street, a distance of about three quarters of a mile. At first glance the terms of the franchise would seem to indicate that it is only where the entire route of the two companies is identical that the Brooklyn & North River Company is prohibited from charging less than 5¢ and this would apply only to the portions just indicated, namely, from the

Manhattan end of the Bridge to Fulton Street, Brooklyn. However, the Brooklyn & North River Company cannot under its franchise start its cars at the New York terminal of the bridge. It is also prohibited from charging more than 3¢ on the bridge itself. It follows that there is no entirely identical route, on which the Brooklyn & North River could be prohibited from charging less than 5¢. The only logical construction which may be put upon this prohibition, therefore, is that except as to the Bridge itself 3¢ passengers may not be carried by the Brooklyn & North River Company on any part of their route which is identical with any part of the route of the Three Cent Line. The prohibition is also clear that the Brooklyn & North River Company shall not terminate any route at the Brooklyn terminal of the bridge.

I think, therefore, that the operation by the Brooklyn & North River Company which terminates at Concord Street, 694 feet east of the Brooklyn end of the bridge, is indefensible under its franchise and should be discontinued. Either they are terminating a route at the Brooklyn end of the bridge or they are carrying 3¢ passengers on a portion of the route identical with that of the Manhattan Bridge Three Cent Line and in either case the operation comes under the prohibition of the franchise. I believe that the turning back of cars at Concord Street should be discontinued and that all cars should be operated through to Fulton Street, 2700 feet further.

If this is done, however, there remains the Brooklyn & North River practice of allowing 3¢ passengers to ride beyond the Brooklyn end of the bridge. The company claims that it is doing everything in its power to keep passengers from doing so, but the evidence was quite conclusive that its efforts are only half hearted, if they can even be dignified by the term "efforts". It is not for the Commission to determine just what methods will be used to stop this practice, but I believe that the fertile minds of the managers of the four largest street railways in the greatest city in the world can, if they really desire to do so, evolve some method which will prevent people from stealing a ride. I therefore believe that the Brooklyn & North River Company should be ordered not to carry any passengers presenting 3¢ tickets beyond the Brooklyn end of the bridge.

On the other hand, I do not see anything in the franchise which would make illegal the short line service in New York from Broadway or Center Street to the Brooklyn end of the bridge, even though it is at a reduced fare.

There is no reason to suppose that the contract contemplated that all cars would be routed from Desbrosses Street Ferry. Neither is there anything which would prohibit the extension of the three cent service in Manhattan, for in that Borough the routes of the two lines are not "identical". The inauguration of this service is no doubt a move designed to bring to bear upon the independent line a form of competition which it cannot meet. It will attract people who desire to go from between Broadway and the Manhattan terminal of the Bridge to the Brooklyn terminal or beyond, and who, except for this service, would walk the few blocks to the Manhattan terminal and take the cars of the Three Cent Line. This is perhaps morally reprehensible and enlists our sympathies for the independent company, but so long as it is not prohibited by the franchise, it does not seem that we can take any action.

An order should be entered directing the Brooklyn & North River Railroad Company to discontinue the practice of turning back cars at Concord Street and forbidding that company to carry three cent passengers beyond the Brooklyn terminal of the Bridge.

In the Matter of the Hearing on the complaint of PHILIP ORDOVER, as assignee of the MANCHESTER RUBBER COMPANY, against THE EDISON ELECTRIC ILLUMINATING COMPANY OF BROOKLYN, as to alleged overcharges for electrical current.

CASE No. 2038

Rates and Charges—Electrical Corporations—Schedule Rates under Retail Lighting Contract Properly Chargeable to Assignee of Bankrupt Customer in arrears under Maximum Demand Contract.—Upon a complaint of Philip Ordover against The Edison Electric Illuminating Company of Brooklyn that as assignee for the creditors of the business of a bankrupt customer of the respondent under a maximum demand contract he was charged for electric current for 38 days under a retail lighting contract an excess of \$205.71 over what the charge would have been under the maximum demand contract, it appeared that the respondent refused to furnish current under the old contract for the failure of the complainant to pay an arrear of \$397.39 under said contract and that the complainant thereupon signed a retail lighting contract. HELD,—that if trustees or assignees in bankruptcy for the benefit of creditors adopt the executory contracts of their insolvents they are required to take them *cum onore*, and that as the complainant did not pay the amount due by his insolvent he could not require the Edison Company, and that Company had no legal right, to furnish him with electrical current on other terms than those provided in its schedule on file with the Commission.

Tariff Schedules—Electrical Corporations—Provision for Continuance of Service to Assignees of Bankrupt Customers Recommended.—In the interest of public policy it is recommended that the electrical corporations under the Commission's jurisdiction file supplemental schedules containing provisions for the continuance of service to trustees or assignees of bankrupt customers under the contracts to said customers.

Hearings closed November 23, 1915. Opinion adopted July 13, 1916.

This proceeding was upon the complaint of Philip Ordovery and was commenced by a Resolution adopted on November 5, 1915, directing a hearing in the matter. On July 13 the Commission adopted the Opinion of Commissioner Hayward, who presided at the hearings, and entered an Order dismissing the Complaint.

H. H. WHITMAN, for the Commission.

PHILIP ORDOVER, the Complainant, in person.

HATCH AND SHEEHAN, by Ashley T. Cole, for The Edison Electric Illuminating Company of Brooklyn.

HAYWARD, Commissioner: The complainant, Philip Ordovery, became the assignee for the benefit of the creditors of the Manchester Rubber Company on July 20th, 1915 and received permission from the court to continue the business for a period of 30 days. Previously, the Manchester Rubber Company had been receiving electrical service, mainly for power purposes, under a "maximum demand contract" which was for a minimum period of one year, and at the time of the assignment the Manchester Rubber Company was in arrears in paying for current consumed in the amount of \$397.49. The assignee applied to the Edison Electric Illuminating Company of Brooklyn for service under the contract which the Manchester Rubber Company had at the time of the assignment, but the Edison Company refused to continue the old contract unless the assignee would pay the amount due thereunder at the time of the assignment. Not being willing or authorized to pay the arrears, the assignee signed a "retail lighting contract", which was the only other form the Edison Company offered to give him, the Edison Company at that time not having on file with the Commission a contract schedule providing for a continuation of service to an assignee, receiver or trustee under the circumstances of this case.

Electrical service was rendered the assignee from July 19th to August 26th, 1915, and \$406.67, the amount charged therefor under the "retail lighting contract" was \$205.71 more than would have

been charged under the "maximum demand contract" of the Manchester Rubber Company. The assignee makes claim for this excess.

Trustees in bankruptcy or assignees for the benefit of creditors are not bound to adopt the executory contracts of their insolvents if it would be unprofitable to do so; but, "if they elect to assume such a contract, they are required to take it *cum onere* as the bankrupt enjoyed it, subject to all the terms and conditions, in the same plight and condition that the bankrupt held it". (Collier on Bankruptcy, (9th Edition) page 1027).

As it was not in the interest of the estate for the assignee to adopt the contract held by the Manchester Rubber Company by paying the amount due thereunder, he could not require the Edison Company, and that company had no legal right, to furnish him with electrical current on other terms than those provided for in its schedule on file with the Commission. It follows that, even if the Commission had the power to order a refund, the complaint must be dismissed.

It seems to me, however, that where, as often happens, a trustee in bankruptcy or other representative of an insolvent estate is directed to continue the business for a limited time, it would be in the interest of public policy that he should be entitled to receive current at the same rate formerly furnished the bankrupt. Indeed, the New York Edison Company now has such a service provision in its schedule; and I recommend that the Secretary of the Commission transmit a communication to the electrical corporations subject to the Commission's jurisdiction which have not such a schedule on file, requesting that they advise the Commission whether they will file a supplemental schedule providing for a continuation of service similar to the schedule of the New York Edison Company.

(STRAUS, *Chairman*, WHITNEY and HERVEY, *Commissioners*, concurring; HODGE, *Commissioner*, absent.)

In the Matter of the Complaint of the VAUDEAU AMUSEMENT COMPANY against THE EDISON ELECTRIC ILLUMINATING COMPANY OF BROOKLYN on account of alleged incorrect bills for current furnished.

CASE No. 2100

Rates and Charges—Electrical Corporations—Alternating Current Supplied to Motor Generator for Operating a Moving Picture Machine Chargeable as Power and not as Light.—Upon the complaint of the Vaudeau Amusement Company against the E. E. I. Co. of B., for charging lighting rates for alternating current supplied to the complainant's motor generator which translated said current into direct current for operating a moving picture machine, HELD—that the test whether current is used for power or for lighting is at the point of delivery and consumption and as the point of consumption was at the motor, where the current was used for power and not for light, power rates should be charged.

Rates and Charges—Electrical Corporations—Use of Current at Night not Determinative of its Use for Light.—The contention of the respondent, E. E. I. Co. of B., that the current used at night for the operation of a moving picture machine is light and should be charged at lighting rates cannot be sustained as the respondent's schedule rates for power do not contain any restrictions as to the time of day when power rates apply.

Hearings closed August 3, 1916. Opinion adopted August 18, 1916.

This proceeding was upon the complaint of the Vaudeau Amusement Company and was started by a Resolution adopted by the Commission on May 25, 1916, directing a hearing in the matter.

On August 11, 1916, the Commission entered an Order providing as follows:

(1) That said Edison Electric Illuminating Company of Brooklyn be and hereby is forbidden to charge the Vaudeau Amusement Company for current furnished to said Vaudeau Amusement Company for operating its motor a rate in excess of that charged by said Edison Electric Illuminating Company for current used for power purposes as set forth in its schedule filed with this Commission.

On August 18, 1916, the Commission adopted an Opinion of Commissioner Hayward, which is set out below.

H. H. Whitman and *J. H. Goetz*, for the Commission.

J. Robert Rubin, for the Vaudeau Amusement Co.

T. S. Jones and *C. E. Butz*, for The Edison Electric Illuminating Company of Brooklyn.

HAYWARD, *Commissioner*: This is a complaint brought by the Vaudeau Amusement Company, which conducts a moving picture theatre in the Borough of Brooklyn, City of New York, against the Edison Electric Illuminating Company of Brooklyn, an electrical utility. The theatre of the complainant is in a district in which the respondent supplies only alternating current. The complainant, which uses direct current, installed a motor generator set. The alternating current supplied by the respondent is metered on the complainant's premises and is delivered to a motor owned by the complainant; this motor is connected with a dynamo, and the dynamo generates the direct current used by the complainant. All the equipment beyond the meter is owned by the complainant.

The respondent has no schedule on file with the Commission classifying electric service for moving picture purposes, and has only schedules for *light* and schedules for *power*. At the time the complaint was filed, the complainant was billed for electric current upon the basis of a lighting rate. The main issue relates to the question whether, under the circumstances shown, service to the complainant should, for rate purposes, be classified as that for power or that for light. There was another issue in regard to the determination of the maximum to be applied, but, as that involved merely an arithmetical computation, the matter was left for adjustment between the parties. But the difference in the charges upon the basis of power and upon the basis of lighting is substantial.

It is contended in behalf of the respondent that the lighting rate should apply, because the motor generator set is only a "translating" device. But the equipment used by the complainant is not the ordinary translator or "transformer." The current furnished at the motor is not transmitted beyond it in any form and whatever loss in power results from using the motor is sustained by the consumer.

Electric light is produced by a current of electricity passing through devices of different kinds called lamps. None of respondent's current ever reached complainant's lamps.

Electric power is produced by a current of electricity applied to a motor which by a belt or shaft connection drives other machinery. Respondent's current in this case drives complainant's motor and it makes no difference whether that motor in turn drives a fan, a lathe, a dynamo, all or either. It is power, not light. From the motor to the dynamo, no current is transmitted, only power. The point of consumption therefore is at the motor, at which the cur-

rent is used for power and not for lighting. The test whether the current is used for power or for lighting is at the point of delivery and consumption.

The respondent further contends that the period during which the current for this particular purpose is used is beyond the usual power period. But the respondent's schedules contain no such restriction in its charges for power. Indeed, as it is common knowledge that moving picture theatres in this vicinity are operated during the day time, when current for power is largely used, the period of use in this case may be assumed also to come within the usual period of power consumption. But even if used exclusively during the peak of the night load on respondent's plant, it would still be power.

Under its schedules the company could not charge the rate for light to a consumer who used its current for motor driven sewing machines at night or beyond the usual power period. No more can it base its charges to complainant on the time of day or night the current is used, simply because it is a dynamo, and not a sewing machine for which the power is used.

The Commission's finding, therefore, is that under the rate classification of the respondent on file with the Commission, the rate for power should govern the charges made to the complainant. All consumers belonging to the complainant's class and being similarly served should of course be treated alike. An order has therefore been entered forbidding the respondent to charge the complainant for current furnished to it for operating its motor a rate in excess of that charged by the respondent for current used for power purposes as set forth in the schedule filed with the Commission.

(HODGE, WHITNEY and HERVEY, *Commissioners*, concurring; STRAUS, *Chairman*, absent.)

In the Matter of the Hearing on the complaint of ED. JANSEN
against THE NEW YORK EDISON COMPANY as to collective
consumption in determining rate.

CASE No. 2134

Rates and Charges—Electrical Corporations—Conjunctional Service Rider—Current used by Tenants not Included to Determine Rates Chargeable to Landlord.—Under a conjunctional service rider to a contract for electric current providing that on account of the close proximity of several buildings under the same ownership so that they may be served from one service the current for the buildings should be taken collectively to determine the rate chargeable to the landlord, the current used by the tenants should not be credited to the landlord for the purpose of charging him lower rates.

Rates and Charges—Electrical Corporations—Guaranteed Consumption for Wholesale Rate—Contract Rider for Inclusion of Tenants' Consumption for Fulfillment of Guarantee Not to Affect Guaranteed Consumption Rate.—A rider to a contract with the N. Y. E. Co. signed by the complainant, Ed. Jansen, the owner of several adjoining buildings, guaranteeing an annual consumption of 100,000 kw. hrs. and fixing a sliding scale of rates, provided that the current consumed by the tenants of said buildings should be credited to the consumption of 100,000 kw. hrs. guaranteed, the accounts of the tenants to have no other relation with said contract. The complainant, having used less than 100,000 kw. hrs. of current per year, contended that he was entitled to have all the current consumed by his tenants credited to him for the purpose of giving him the benefit of a lower step-rate than 5 cents per kw. hr. charged by the respondent for the first 15,000 kw. hrs. of monthly consumption. HELD—that the intent of the rider evidently was that the use of the current by the tenants should be applied only in fulfilling the guarantee, bringing the customer within the wholesale classification, but not for the purpose of securing rates within a class other than those obtained by the actual consumption of the customer, and that the complaint should be dismissed.

Hearings closed August 30, 1916. Opinion adopted September 6, 1916.

This proceeding was upon the complaint of Ed. Jansen and was started by the adoption of a Resolution, on August 23, 1916, directing a hearing in the matter.

On August 30, 1916, a hearing was held and on September 6, 1916, pursuant to an Opinion of Commissioner Whitney, who presided at the hearing, the Commission entered an Order dismissing the complaint.

E. J. Crummev, for the Commission.

WHITNEY, *Commissioner*: Complaint is made by Ed. Jansen, owner of the buildings upon premises Nos. 113-119 West 17th

Street and 108-116 West 18th Street, in the Borough of Manhattan, New York City, against The New York Edison Company, which supplies electric current to the premises of the complainant, with regard to the basis applied in determining the rate which the complainant should pay.

On October 6, 1910, an agreement was made between the complainant and the Edison Company for the supply of electric current to the premises mentioned, for a term of six years, which provided "that the aggregate use of current supplied under this contract shall not be less than 100,000 kilowatt hours per year", and fixed the following rates:

For the first 15,000 kilowatt hours, monthly consumption				5¢	per	K. W. H.
From 15,000 to 25,000	excess over 15,000	"	"	4½¢	"	"
From 25,000 to 35,000	"	"	25,000	4¢	"	"
From 35,000 to 50,000	"	"	35,000	3½¢	"	"
All over			50,000	3¢	"	"

Attached to the contract were two riders, one relating to "Conjunctural Service" and the other relating to "Owner's or Lessee's Service", as follows:

"(1) In view of the fact that the buildings enumerated in this contract are not more than 100 feet apart, are under a common ^{ownership} leasehold and may be served from one service the current required for them may be taken collectively in determining the rate to which the undersigned is entitled under this contract.

"(2) In view of the exclusion of all other electric service from the building, and of a private plant for light or power during the term of the contract, that the electric current consumed by the tenants shall be credited to the consumption of 100,000 kilowatt hours annually guaranteed by the undersigned. The accounts of the tenants shall have no other relation with this contract."

During the term of the contract, the consumption of the complainant on all the buildings approximated 70,000 to 85,000 kilowatt hours a year, whereas the tenant of one of the buildings, the New York Mail Transportation Company, consumed approximately 400,000 k.w.h. a year. The complainant in no year reached the guarantee requirement of 100,000 k.w.h. a year, but the Edison

Company credited the complainant with the electric current consumed by the tenant to the extent of making up the difference between the amount actually consumed by the complainant and the 100,000 k.w.h. annually guaranteed, thus charging the complainant a flat rate of 5c. per k.w.h. for his consumption.

The complainant now claims, however, that he is entitled to a lower rate than 5c. under the sliding scale, not because he personally used enough current to obtain the benefits of that scale, but because the current used by his tenant, combined with his own, would bring the aggregate to a point to which the lower rates were applicable. In other words, he claims that the consumption of the tenant should be applied, not only to fulfilling the guarantee of minimum consumption, but also to determining the rate which he shall pay for current.

The complainant contends that, under the provision in the Conjunctional Service clause that "the current required for them may be taken collectively in determining the rate to which the undersigned is entitled under this contract," if he is entitled to credit for any part of the current consumed in these buildings by the tenants which was not charged directly to his account, he is entitled to a credit for the entire consumption by the tenant. This paragraph relates wholly to the juxtaposition of the properties, permitting their service under a common contract, though located on different streets. No reference is made to "tenants" in this clause, whereas specific reference to tenants is made in the other clause relative to Owner's or Lessee's Service. The language "the current required for *them* may be taken collectively" refers to *buildings* and not to *tenants*, and covers service to be rendered to *complainant* in more than one building, and not to service to complainant and tenants. The fair intendment of the provision is that, in computing the consumption, the current required *by the complainant for them* (the buildings referred to in the contract) should be taken collectively in determining the rate. In other words, instead of having separate services for the several buildings, involving perhaps as many guarantees as buildings and additional equipment, all the current used by the complainant in all the buildings may be aggregated to make up the minimum guarantee or any amount necessary to obtain a rate lower than that applicable to the guarantee.

Moreover, the complainant contends that, under the provision in the Owner's or Lessee's Service clause that "the electric current

consumed by the tenants shall be credited to the consumption of 100,000 kilowatt hours annually guaranteed," if the entire consumption, including that of the tenants, had fallen below the guarantee, the Edison Company would have charged the complainant with a deficit, and that, therefore, the 100,000 kilowatt hours should be considered as a minimum guarantee and not as a limited amount against which the tenants' consumption may be applied. But the language in this clause negatives such a construction, for it provides that the tenants' consumption shall be "*credited to the consumption of 100,000 kilowatt hours annually guaranteed.*" It does not provide that the tenants' consumption shall be credited to the complainant's consumption, but to the consumption of "*100,000 kilowatt hours.*" It was evidently intended that the use of current by the tenants should be applied only in fulfilling the guarantee, bringing the customer within the wholesale classification, but not for the purpose of securing rates within a class other than those obtained by the actual consumption of the customer. The tenants' consumption could not be used for any other purpose, for the clause provided that, "The accounts of the tenant shall have no other relation with this contract." The complainant assumed no responsibility for the payment of the charges for the tenants' consumption; and the tenant evidently made its own contract for current directly with the Edison Company at rates commensurate with the quantity of service taken by it.

It is, therefore, my opinion that the consumption of the tenants should not, under the contract now construed, be applied for the purpose of determining the rate which the complainant should pay for current in addition to that of guarantee of the contract, and the complaint should be dismissed. No issue is presented as to the reasonableness of the provisions considered in this case, and no opinion is expressed thereon. This opinion is confined simply to the question of what are the rights of the parties under these provisions.

(STRAUS, *Chairman*, HAYWARD, HODGE and HERVEY, *Commissioners*, concurring.)

In the Matter of the Hearing on motion of the Commission in respect of the extension of the Boston Road Line of the UNION RAILWAY COMPANY OF NEW YORK CITY from East 177th Street to East 181st Street, in the Borough of The Bronx, City of New York.

CASE NO. 2121

Service—Street Railroad Corporations—Extension of Boston Road Line to 181st Street—In the Absence of Franchise Right Extension cannot be Required.—Upon a petition to require the U. Ry. Co. of N. Y. C. to extend the operation of its Boston Road Line from 177th Street to 181st Street it appeared that Company's franchise terminated south of 179th Street. HELD,—that the Commission should not require a public utility to enter upon a territory for which it does not possess all the necessary franchise rights, otherwise the Commission would dispense with compliance by the utility with the safeguards which the law provided against the assumption by the utility of rights not conveyed to it.

Service—Street Railroad Corporations—Operation on Tracks of Affiliated Company not Enforceable in the Absence of Franchise Right.—No such identity of property rights exists between two street railroad corporations in the same system that the Commission may compel one of the companies without a franchise to operate on the tracks for which the other company has a franchise, and while the two companies may enter into an agreement for the joint use of the tracks the Commission has no power to compel them to make such an agreement.

Service—Street Railroad Corporations—Transfer Arrangement Preferable to Short Extension Involving Switching Back of Cars.—Where the extension of a line for a short distance to the end of the tracks of a street railroad corporation is impracticable as involving the switching back of cars and an existing transfer arrangement affords better service the Commission is not warranted in ordering said extension.

Franchises and Privileges—Street Railroad Corporations—Application for Franchise Voluntary Act of Corporation.—A request of the petitioners that if the Commission should not Order the respondent to operate the Boston Road Line to E. 181st Street for the want of a local franchise right to that point it should recommend that an application be made for such franchise, cannot be granted as the determination of the matter is one for the judgment of the Company's directors.

Hearings closed July 19, 1916. Opinion adopted September 21, 1916.

Upon a petition that the Commission direct the Union Railway Company of New York City to extend its Boston Road Line from East 177th Street northerly to East 181st Street, in the Borough of The Bronx, the Commission adopted a Resolution on July 13, 1916, directing a hearing in the matter. A hearing was held on July 19, 1916, before Commissioners Hayward and Whitney, and on September 21, 1916, pursuant to an Opinion of Commissioner Hayward.

adopted on that day, the Commission entered an Order discontinuing the proceeding.

The further facts in the matter are set forth in the Opinion adopted.

E. J. Crummey, for the Commission.

Harry B. Chambers, for the East Tremont Taxpayers' Association.

Edward A. Maher, Jr., for the Union Railway Company of New York City.

HAYWARD, Commissioner: This proceeding was commenced on motion of the Commission for the purpose of investigating a petition filed by interested persons asking that the Union Railway Company of New York City be ordered to extend its Boston Road line from East 177th Street and Boston Road northerly to East 181st Street and Boston Road, in the Borough of The Bronx, City of New York. At the hearing the petition was amended so as to request that the railway company be directed to operate the line only to 180th Street and that the Commission advise the extension to 181st Street.

Tracks are now laid on Boston Road between 177th Street and 180th Street, over which the New York City Interborough Railway Company operates two lines, the Bronx and Van Cortlandt Park line and the 180th Street Crosstown line. A switch is maintained on Boston Road between 178th and 179th Streets. During the rush hours the Boston Road line is operated on a route between 128th Street on the south via Third Avenue, Boston Road, Walker Avenue and Morris Park Avenue and Van Nest. During the non-rush hours one-half of the service operates to West Farms Square, at which point cars are turned back, but occasionally the cars are turned back at the switch between 178th and 179th Streets.

The Boston Road line is operated during the rush hours on a 3½ minute headway between Morris Park Avenue and 138th Street, and a 7 minute headway south of 138th Street, no short line cars being operated; and during the non-rush hours on a headway of 5 minutes between West Farms Square and 128th Street, and of 10 minutes between West Farms Square and Morris Park Avenue, the short line cars being turned back at West Farms Square. The headway of the 180th Street crosstown line is 6 minutes during rush hours and 10 minutes during non-rush hours, and of the Bronx

and Van Cortlandt Park line 10 minutes during the rush hours and 12 minutes during the non-rush hours. The headway of the combined service between 177th and 180th streets is, however, irregular, because the several lines are operated at different intervals.

Transfers are exchanged between the Boston Road line and the other lines intersecting or connecting with it at West Farms Square, so that a passenger may ride from or to East 180th Street and Boston Road at a five cent fare.

The petitioners urged the necessity for an extension to East 181st Street on the ground that passengers are inconvenienced by transferring at East 177th Street. There is an entrance to the Bronx Park at 180th Street and Boston Road, through which there passed between July 1, 1915, and June 30, 1916, an attendance of 515,848 persons. There is a Magistrate's Court on East 181st Street near Boston Road. The adjoining property on Boston Road, 180th Street and 181st Street contains public institutions, an amusement place, hotels and office and store buildings, which naturally attract a considerable number of persons who would, if they used the Boston Road line, be better accommodated by through operation to East 181st Street. The railway company, however, asserts that the Boston Road line does not transport enough persons destined to these places to necessitate the construction of the extension.

The power of the Commission to require the Union Railway Company to extend the Boston Road line north of 177th Street, either by car operation or by track construction, is dependent, in this case, upon the question whether the company possesses franchise rights to operate over the streets on which the extension is desired. The Commission should not require a public utility to enter upon a territory for which it does not possess all the necessary franchise rights, otherwise the Commission would dispense with compliance by the utility with the safeguards which the law has provided against the assumption by the utility of rights not conveyed to it.

No doubt exists that the New York City Interborough Railway Company possesses franchise rights for a street railroad between 177th and 180th streets. It has been suggested by the complainants that, in view of the fact that the Union Railway Company and the New York City Interborough Railway Company are a part of one system under the same management, such an identity of property rights exists that the Commission may compel the Union Railway

Company to operate over the streets for which the New York City Interborough Railway Company has a franchise. The Union Railway Company could, of course, enter into an agreement with the New York City Interborough Railway Company to use the tracks and rights of the latter for operation between 177th and 180th streets; but the law gives the Commission no power to compel the companies to make such an agreement. The two companies are two separate corporate entities and the fact that they are under a common control does not, unfortunately, confer authority upon the Commission to compel them to use their property interchangeably.

There is no evidence in this case that the Union Railway Company or any of its predecessors possesses a franchise for constructing or operating tracks north of 177th Street on Boston Road, unless it be incidental to other rights. The Union Railway Company operates its line along Boston Road under a franchise granted by the Legislature and constituting part of Chap. 892, Laws of 1867. This franchise was granted to the predecessor company, the Harlem Bridge, Morrisania and Fordham Railway Company, for constructing tracks along Boston Road "to the village of West Farms." The franchise did not designate any street or define an exact point as the terminal of the route, nor did it expressly provide for sidings or car-stands. West Farms was never an incorporated village and therefore had no official boundary lines, but by "West Farms" the legislature probably meant the intersection of Boston Road and what is now Walker Avenue. A later franchise was granted by the Common Council of The City of New York to the Union Railway Company, on August 23, 1892, for a route on Tremont Avenue intersecting Boston Road at West Farms, and this franchise provided for the construction of the route and also authorized the company to construct "such switches, sidings, turnouts, turntables and suitable stands as may be convenient for operation of said extensions or branches." It seems, however, that the Union Railway Company did construct the tracks between 177th Street and a point between 178th and 179th streets, and has been using the track as a switch for turning back Boston Road-West Farms line cars. Whether the company constructed these tracks under a claim that they were authorized by the right to construct "to the village of West Farms" or by the right to construct switches, sidings, stands, etc., is not shown. The New York City Interborough Railway Company has been using the constructed portion of the track and constructed its own tracks beyond that to 180th Street. However, there does

not appear to be a clear franchise right in the Union Railway Company to operate over the tracks north of 177th Street for car service.

The petitioners amended their petition so as to ask for the extension only to East 180th Street. But whatever rights the Union Railway Company may have in the track constructed by it, they do not extend beyond a point between 178th and 179th streets. As has been pointed out, two street car lines are already operated over tracks between 177th and 180th streets. It would be impracticable from an operating standpoint to switch back Boston Road cars between 178th and 179th streets as a regular practice at all times of the day, and the extension of the service for this short distance only would not materially further the petitioners' object. The Commission's power in this matter, in any event, is limited to requiring the operation of cars to a point between 178th and 179th streets. Considering the fact that the company's transfer arrangements with the New York City Interborough Railway Company afford as good, if not better, service for this block and a half as would be afforded by operating its own cars, the Commission is not warranted in making an Order for the extension of the service to 178th-179th streets.

The complainants have also asked that, if the Commission should not order the entire extension to East 181st Street, it make a recommendation that the Union Railway Company apply to the Board of Estimate and Apportionment for the necessary franchise rights for such entire extension. The testimony shows that it would undoubtedly be a substantial advantage to operate this line to East 181st Street. The company contends that the operation of an additional line between 177th and 180th streets would seriously interfere with the operation of the other two lines between those streets and would affect the service beyond. Any additional transportation facility is highly desirable. If the Union Railway Company possessed the necessary franchise rights at the present time, the Commission would not hesitate to determine the company's obligation; but, in the absence of a franchise granted by the municipal authorities to the railway company, the determination of the matter is, in the present state of the law, one for the judgment of the company's directors.

The complaint must, therefore, be dismissed and, as the proceeding is on motion of the Commission, an Order will be adopted discontinuing the proceeding.

(STRAUS, *Chairman*, HODGE, WHITNEY and HERVEY, *Commissioners*, concurring.)

In the Matter of Extension of Footwalk on trestle across Jamaica Bay, by THE LONG ISLAND RAILROAD COMPANY and THE NEW YORK AND ROCKAWAY BEACH RAILWAY COMPANY on the Rockaway Beach Division.

CASE No. 1858

Ways and Structures—Railroad Corporations—Footwalk on Trestle across Jamaica Bay—Gradual Extension of Footwalk approved.—Where a trestle may be safely crossed by walking the ties and a footwalk is in course of construction from each end of the trestle the whole length of the footwalk need not be immediately constructed and gradual extension of the same at a reasonable rate is approved.

Opinion adopted September 28, 1916.

On January 12, 1915, the Commission entered an Order in Case No. 1858, directing The Long Island Railroad Company and The New York and Rockaway Beach Railway Company to construct a footwalk between the eastbound and westbound tracks on the following stretches of trestle on the Rockaway Beach Division across Jamaica Bay:

(1) Beginning at what is known as Howards at the north end of the trestle and extending south for a distance of one-half mile.

(2) Beginning on the north side of the Beach Channel Drawbridge near Hammels and extending northerly for a distance of one-half mile.

The Companies accepted the Order and submitted plans for the construction of the footwalk, which were approved by the Commission by a Resolution adopted March 2, 1915.

Upon the construction of the required portions of the footwalk the advisability of extending it to cover the whole length of the trestle, about four miles, was taken up with the companies, and it was agreed by The Long Island Railroad Company in a letter to Commissioner Hodge, dated September 19, 1916, "to add during the Fall or early Spring an additional three-quarters of a mile—three-eighths of a mile at each end." Whereupon the following Opinion of Commissioner Hodge was adopted:

HODGE, *Commissioner*: This matter having been brought up by complaint of the Ridgewood Board of Trade under date of June

5th, and having been reported on by the Electrical Engineer under date of June 26th, was referred to me by the Committee of the Whole on July 26th.

I have examined this trestle and find that under order of the Commission dated January 12, 1915 (Case 1858) the railroad company has laid a plank foot-walk for about one half mile at each end of this trestle, and there seems to have been a general understanding on the railroad's part that they would add to this foot-walk from time to time until they eventually had a continuous walk from one shore to the other.

While the foot-walk would be convenient to passengers in case a train was stalled on the trestle, yet I am of the opinion that passengers could safely walk the ties, and I therefore do not think that the immediate completion of this foot-walk is urgently necessary.

However, I am of the opinion that it would be wise to gradually extend this foot-walk, and have taken the matter up with the railroad company, and they, in a letter of September 19th, have suggested that during the fall of 1916 and the early spring of 1917, they add an additional three quarters of a mile; being three eighths of a mile at each end adjoining the portion now in place.

I would recommend that this suggestion be accepted for the present, and that the case be kept open for further additions as may appear to be desirable.

(HAYWARD, WHITNEY and HERVEY, *Commissioners*, concurring; STRAUS, *Chairman*, absent.)

In the Matter of the Complaint of ALBERT MORITZ and others
against THE EDISON ELECTRIC ILLUMINATING COMPANY OF
BROOKLYN

CASE NO. 1540

Powers of Commission—Rate Regulation of Electrical Corporations
—**Powers of Investigation not Limited to Specific Complaints.**—Respondent's contention, at the close of the hearings, that as the Complaint was directed solely to the existing rate of 12 cents and the proposed rate of 11 cents per kw. hr., and notice of the hearing was limited thereto, the investigation should have been confined under sections 71-72 of the P. S. C. L. to the cause for such complaint, cannot be sustained in view of the provision in section 72 that the Commission "may consider all facts which in its judgment have any bearing upon a proper determination of the question *although not set forth in the complaint and not within the*

allegations contained therein"; also because the complaint alleged discrimination in rates charged to different classes of consumers; and because proceedings herein are governed by section 66 of the P. S. C. L., which gives the Commission broad powers of rate regulation.

Practice and Procedure of Commission—Notice of Complaint against Rates of Electrical Corporations—Reasonable Notice Adequate.—Service upon the respondent of a complaint against its rates was reasonable notice that the Commission would exercise all the powers under the provisions of the statute pertinent thereto and gave the respondent a reasonable opportunity to prepare its defense.

Rate Regulation—Electrical Corporations—Determination of Fair Value of Property a Basis for Rate Making.—To ascertain the value of the physical property is the first step toward the determination of the ultimate question of "fair value" of the property for rate making purposes.

Valuation—Electrical Corporations—Contingencies and Imperfect Inventory—Allowance of over \$470,000 sufficient.—The largest item of difference in the valuation of the physical property of the E. E. I. Co. of B. was about \$649,000 under the head of contingencies and incomplete inventory which was appraised by the respondent's engineers to December 31, 1913, at \$1,119,224 and by the Commission's engineers at only \$470,388. HELD,—that in view of the relative completeness of the record herein the allowance for contingencies must be chiefly for imperfect inventory, and large allowances in other cases and circumstances do not justify, in view of the testimony herein, a departure from the allowance fixed by the Commission.

Valuation—Electrical Corporations—Engineering—Allowance of 4.2 Per Cent Adequate.—An allowance is made for engineering of 4.2 Per Cent on the appraised value of the physical property, including contingencies and incomplete inventory, against the contention of the respondent that the allowance should be 5.4 Per Cent.

Valuation—Electrical Corporations—Interest During Construction.—Interest on land is not allowed in a rate case where the present value of land is used.

Valuation—Electrical Corporations—Land—Present Value for Rate Purposes.—The present value of all the land reasonably necessary for the service of the public should be allowed in a valuation case for rate purposes.

Valuation—Electrical Corporations—Accrued Depreciation—Straight Line Method.—In accordance with the practice of the Commission and decisions of the Courts in the appraisal of physical property for capitalization and rate cases, deduction will be made for both physical and functional depreciation, computed by the straight line method, from the cost of reproduction new of the physical property.

Valuation—Electrical Corporations—Partly Used Property to be Valued According to Use.—Where a generating station, which was constructed by one of the predecessor companies, is but little used but the cost of additional facilities at the other station to duplicate the service is not determinable from the records, the entire value of the former will be allowed, but said allowance is not to be construed as a precedent that property in excess of reasonable needs for service is to be included in a valuation for rate purposes.

Valuation—Electrical Corporations—Overhead and Development Expenses not Chargeable to Capital if Already Charged to Operation.—

Charges to Capital of sums aggregating over four million dollars for overhead and development expenses will not be allowed when it has been the practice of the respondent to charge them to operation in accordance with the accounting provisions of the Commission, and a different ruling would require a revision of the accounts and a transfer from operating charges to profits of an annual sum of about \$335,000 which would be sufficient to pay a fair rate of return on the entire capital charge in dispute.

Valuation—Electrical Corporations—Patent Rights not Valued for Rate Purposes.—No allowance will be made for patent rights for which securities have been issued because, having a limited life, sound accounting requires that their cost should be amortized and because they no longer represent property used in the electrical service to the public.

Valuation—Electrical Corporations—Working Capital—Consumers' Deposits not Deducted.—No deduction will be made from working capital for consumers' deposits because if no such deposits were received the respondent would have to supply an equivalent amount of capital on which it would be entitled to a return.

Valuation—Electrical Corporations—Working Capital—Unbilled Current not Added.—Under the circumstances herein no addition will be made to working capital for unbilled current because to do so would require a revision of the accounts increasing the surplus of the respondent by the amount of said unbilled current and the revenues for the current year by the excess of the unbilled current for the current year over that of the preceding year.

Valuation—Electrical Corporations—Franchise Value not Allowed for Rate Purposes.—In accordance with well established law no allowance will be made for franchise value in a valuation of property for rate purposes.

Valuation—Electrical Corporations—Cost of Unifying System—No allowance for Securities Issued in Excess of Value of Tangible Property. An allowance of over three and one-half million dollars was claimed by the respondent for commissions and other expenses incident to the issuance of securities and for securities issued in excess of the value of tangible property acquired from predecessor companies. HELD,—that the only claim that can be made upon the public is for a fair return on property devoted to the public use and not on securities issued, that economy and efficiency resulting from the unification of the electrical system cannot be valued any more than advanced legislation which promotes the security of the investors, and that services in connection with organization and promotion will be considered under the head of organization expenses.

Valuation—Electrical Corporations—Organization Expenses of \$200,000 Allowed.—On the basis of the charges made on the books of the respondent and its predecessors, whose records have been found to be complete, an allowance will be made for organization expenses in the amount of \$200,000 out of a total of \$1,358,238 claimed by the Company.

Valuation—Electrical Corporations—Going Value—Large Average Earnings.—Where the average returns upon a fair valuation of the property throughout the history of the business exceeded seven per cent and in fact amounted, as in the case herein, to nine per cent upon the valuation, no deficiency in a fair rate of return exists to support a contention that an allowance for going value should be made.

Valuation—Electrical Corporations—Total Value of Property.—The total value of the property of the E. E. I. Co. of B. is appraised for rate

purposes as of January 1, 1916, at a round sum of \$22,000,000, which is more than the total capital provided by the investors and comprises as follows: Cost of construction, material, labor, contingencies and engineering \$26,269,594; interest during construction, \$305,000; deduction for accrued depreciation, \$7,140,000, leaving a net present value for physical property of \$19,434,594; land, \$1,160,000; working capital, \$1,000,000 and organization expenses, \$200,000, making a total of \$21,794,000.

Rate of Return—Electrical Corporations—Return of Seven Per Cent Adequate.—It was contended on behalf of the respondent that 8 per cent should be allowed as the proper rate of return and in support thereof it was testified that securities had been issued at prices making the average cost of money to the respondent's system about $6\frac{3}{4}$ per cent. It was adduced at the hearing, however, that this was an excessive cost of money and was due to the fact that 8 per cent dividend paying stock and 6 per cent debentures were issued at par although the market value was far above par, and that the mortgage bonds of the system were selling on a 5 per cent basis and the stocks on a basis of less than 7 per cent. HELD,—that a 7 cent return would be adequate to permit the payment of 5 per cent interest on bonds and 8 per cent dividends on stock and to provide a sufficient reserve for surplus and contingencies.

Rate of Return—Electrical Corporations—Fair Value not Capitalization Basis for Fair Rate of Return.—A reduction of rates, it was contended, would necessitate a reduction in the rate of dividends paid by the respondent. HELD,—that the obligations of the public must be based on the requirement of a fair return on fair value, not on the interest and dividends paid on an inflated capitalization.

Cost of Service—Electrical Corporations—Rate Investigation Expenses not Applicable as Normal Operating Charge.—Expenses of extraordinary character including \$70,000 incurred in connection with the rate investigation are not properly chargeable to operation to determine the normal cost of service.

Cost of Service—Electrical Corporations—Employees Profit Sharing Fund—Only Permanent Contributions Chargeable to Operation.—An annual contribution of \$80,000 to an investment fund for the benefit of employees under a profit sharing plan, which was formerly charged against surplus, will be permitted as an operating charge provided said contribution will continue regardless of the effect of a revision of rates upon dividends.

Cost of Service—Electrical Corporations—Depreciation Charges Allowed on Basis of Accrued Depreciation—Straight Line Method of Computation.—The cost of operation will include an annual charge for depreciation based upon the finding of the Commission for Accrued depreciation and computed on the straight line method, said charge being deemed sufficient for all purposes contemplated in the Commission's accounting regulations, "Account E 842, General Amortization Electric".

Rates and Charges—Electrical Corporations—Excessive Profits Justify Rate Reduction.—The profits during the years 1913, 1914 and 1915 having yielded net returns of 9.6%, 10.9% and 12.4%, respectively, on the fair value of the property and the income from electric operations in 1915 having been \$2,650,000, the consumers are entitled to a reduction in rates aggregating about \$1,150,000.

Rates and Charges—Electrical Corporations—Rates to Cover Cost of Service.—Rates should take account of expenses directly assignable to the individual consumer or to a special class of consumers and incurred in connecting such consumers to the electrical system and rendering service to them.

Rate Differentiation—Electrical Corporations—Differentiation According to Time and Conditions of Service Not Unjust Discrimination.—Off-peak service may be rendered at lower rates because the additional fixed charges and operating expenses occasioned thereby are lower, and differentiation in rates according to varying conditions of service which involve varying costs is not unjust discrimination.

Rates—Electrical Corporations—Reduction of Retail Rates.—It appeared that the average price paid by retail lighting customers exceeded three times the average price paid by wholesale customers. HELD,—that if the prices paid by wholesale customers are remunerative the rates imposed upon retail customers are excessive and should be reduced by more than \$1,150,000.

Rates—Electrical Corporations—Maximum Demand Rates—Method of Determining Maximum Demand.—It appeared that the rates in force for retail lighting, based upon a maximum demand, was 11 cents for the first two hours', 8 cents for the second two hours' and 4 cents for the excess over four hours' average daily use of maximum demand; that the maximum demand was assumed to be 50 per cent of the connected load for residences and 70 per cent for other premises; and that in calculating the maximum demand no installation was rated at less than $1\frac{1}{2}$ kilowatts. It appeared, moreover, that in most cases the maximum demand was less than $1\frac{1}{2}$ kilowatts capacity, that two thirds of the respondent's meters had a capacity of only $1\frac{1}{4}$ kilowatts or less, and that the proper meter capacity was only 25 per cent of the maximum demand for residences and 60 per cent for commercial establishments, without deducting for losses in transmission. HELD,—that the existing method of determining maximum demand unjustly discriminates against retail customers and should be modified so that the maximum demand shall be computed upon a basis of 25 per cent of the connected load for residences and 50 per cent for other premises, with a minimum rating of 250 watts.

Rates and Charges—Electrical Corporations—Cost of Lamp Renewals—Type of Lamps to be Supplied.—A charge of one-half cent per kw. hr. of current used for lighting may be made for 50 watt standard tungsten lamps, which should be substituted for gem lamps, and the charge for current should be separated from the charge for lamps, so that in the consumption of current for domestic appliances from lighting sockets no charge will be made for lamps if no lamps are used or if they are purchased by the consumer.

Rates and Charges—Electrical Corporations—Minimum Charge of \$12 per year.—The practice of making a minimum charge of \$12 per year will be left undisturbed because mere connection with the consumer's premises involves certain expenses for maintaining the meter, indexing, billing, etc. regardless of the amount of current consumed.

Rates—Electrical Corporations—Flat Rate Not Productive of Profitable Long Hour Consumption.—Because certain consumer costs are almost the same for all customers and those using current an increasing number of hours do so at a decreasing production cost for each additional hour, a flat rate per kilowatt hour without regard either to the quantity of current taken or number of hours used should not be established.

Rates—Electrical Corporations—Retail Rates Excessive.—The contention of the respondent that the retail rates are not excessive and that under the existing maximum retail rate a large group of customers pay less than their cost of service cannot be sustained in view of the unwarranted distribution among all customers of advertising and promotion expenses and loss on uncollectible bills, as well as in view of the charge made to retail customers of a return on the investment in, and the expense of, maintaining a large part of the mains, and if said items were

excluded the consumer cost of the maximum rate retail customers would be reduced 50 per cent and would yield sufficient revenue to pay all the direct consumer costs plus a net revenue of 6 cents per kw. hr. for operating charges and a fair rate of return, which is double the average price charged to wholesale low tension customers.

Rates—Electrical Corporations—Differentiation of Rates—Small Group Rates to Insure Profit from Every Customer not Desirable.—Differentiation of rates should be by large classes and not by small groups of consumers, and a maximum rate should be profitable on the class as a whole but not so high as to insure a profit on every customer, particularly if a minimum charge is imposed to discourage unprofitable business.

Rates—Electrical Corporations—Reduction of Lighting Rates Required.—Account being taken of the conditions of service so as to give the long hour consumers the benefit of a lower rate, the E. E. I. Co. of B. is directed to establish a schedule of rates, excluding the installation or renewal of lamps, as follows: 8c. for the first two hours' average daily use per month, 6c. for the second two hours' average daily use per month and 4c. for the excess over four hours' average daily use per month; said schedule to apply to public as well as private buildings.

Rates—Electrical Corporations—Reduction of Retail Power Rates Required—Discriminating Quantity Discounts Abolished.—The maximum retail rate for power should be reduced from 10 cents for the first 25 hours' monthly use of the maximum demand to 8 cents; the rate of 5 cents for the second 25 hours' monthly use of the maximum demand and 3 cents for the excess over 50 hours' monthly use of the maximum demand should remain unchanged except that quantity discounts on bills under the 3 cent rate should be abolished as they result in unjust discrimination.

Rates—Electrical Corporations—Wholesale Rates—Quantity Rates to be Superseded by Maximum Demand and Hours Use Rates.—The existing "Wholesale" Rate and Rate "B" under which charges vary according to quantity of current used should be abolished as well as the discounts on bills under the maximum demand rate and a single maximum demand and hours use rate schedule should be substituted, which will take account of the consumer's load factor in its relation to the Company's peak.

Rates—Electrical Corporations—High Tension Rates—Quantity Consumption Rates for Individual Consumers to be Abolished.—Multiplicity of high tension rates for individual consumers based on quantity of current consumed should be replaced by rate schedules applicable to classes and conditions of service.

Rates—Electrical Corporations—Revision of Rates Required—Order Entered.—An Order will be entered, effective Dec. 1, 1916, for a term of one year directing the E. E. I. Co. of B. to revise its rates for electric current as in the Order provided.

Hearings closed April 28, 1916. Opinion adopted October 27, 1916.

This proceeding was commenced by the adoption of a Resolution on July 16, 1912, directing a hearing upon the complaint of Albert Moritz and more than one hundred other consumers against the rates of The Edison Electric Illuminating Company of Brooklyn. While the hearings were in progress an

appraisal was made by the Commission of the Company's property and the records were carefully examined for the purpose of arriving at a valuation, which was finally fixed by the Commission as of January 1, 1916, at \$22,000,000 as against \$38,822,411 claimed by the Company.

On October 27, 1916, the Commission entered an Order, pursuant to an opinion of Commissioner Hayward, which is set out in full below, reducing the rate for current from 11 cents to 8 cents per kilowatt hour. The Order was as follows:

A hearing having been had upon the complaint, dated June 10th, 1912, of Albert Moritz and more than one hundred other customers of the Edison Electric Illuminating Company of Brooklyn before Hon. Mito R. Maltbie, Commissioner, beginning July 30th, 1912 and continuing before Hon. William Hayward, Commissioner, on and after April 13th, 1915, Albert Moritz and others appearing in behalf of the complainants, Samuel F. Moran, Ashley T. Cole and others appearing as counsel for said company, and Henry H. Whitman, Assistant Counsel to the Commission, attending, and the Commission having made an investigation to enable it to ascertain the facts requisite to the exercise of the powers conferred upon it, it is

I. ORDERED that on and after December 1, 1916 and for a period of twelve months thereafter the maximum price to be charged by said Edison Electric Illuminating Company of Brooklyn for electric service, exclusive of the installation and renewals of electric lamps, shall be eight cents per kilowatt hour.

II. The Commission being of opinion after said hearing and said investigation that the rates or charges of said company are unjust, unreasonable, unjustly discriminatory and unduly preferential, it is

FURTHER ORDERED that on and after December 1st, 1916 and for a period of twelve months thereafter said rates or charges shall be as follows:

1. Eight cents for the first two hours' average daily use of the maximum demand; six cents for the second two hours' average daily use of the maximum demand; and four cents for the excess over four hours' average daily use of the maximum demand. Said maximum demand, except when determined by meter, shall be calculated as not in excess of twenty-five per cent of the consumers' connected load in the case of residence customers, and not in excess of fifty per cent of the connected load for other consumers, provided, however, that said maximum demand shall not in any case be assumed to be less than two hundred and fifty watts.

2. The maximum price to be charged for installation and renewal of incandescent lamps furnished by said company in connection with the supply of current for lighting under any lamp service agreement shall be one-half of one cent per kilowatt hour. Said lamps shall be tungsten lamps of standard efficiency and ratings, or other lamps of like or greater efficiency and ratings. Said company shall not furnish to its customers Gem lamps, or other lamps of an efficiency of less than one and one-quarter watts per candle power. If tungsten lamps of smaller capacity than fifty watts are furnished by said company it shall be entitled to make an extra charge therefor but not more than the additional cost of the installation and renewal of such smaller lamps.

3. No discount shall be allowed by said company under its maximum demand power rate.

III. FURTHER ORDERED that on or before November 15th, 1916, said company shall issue, file and post a schedule or supplement to carry into effect the provisions of this Order.

IV. FURTHER ORDERED that on or before December 1, 1916, said company shall submit for the approval of the Commission a complete tariff for all electrical service effective December 1st, 1916, which tariff shall be in accordance with the provisions of this Order and the decision in this case.

V. FURTHER ORDERED that this Order shall take effect forthwith and shall continue in force until changed or abrogated.

VI. FURTHER ORDERED that on or before November 10th, 1916 said company shall notify the Commission whether this Order is accepted and will be obeyed.

H. H. Whitman, for the Commission.

Albert Moritz, the Complainant, in person.

Hatch and Sheehan, by *Ashley T. Cole* and *Samuel F. Moran*, for The Edison Electric Illuminating Co. of Brooklyn.

HAYWARD, *Commissioner*:

The Proceeding

This proceeding was commenced on July 16, 1912, upon a petition of more than 100 customers of the Edison Electric Illuminating Company of Brooklyn, dated June 10, 1912, alleging:

"I. That the prices of electricity sold and delivered in the Borough of Brooklyn, in the City of New York, by the Edison Electric Illuminating Company of Brooklyn, under its general rate of 12 cents, or its proposed rate of 11 cents, are unjust, unreasonable and excessive, and are disproportionate to the proper cost of manufacturing and delivering such electricity in said Borough.

"II. That the differences in price of such electricity so sold and delivered under the general rate and the prices charged to numerous preferred customers are unreasonable, and such differences unjustly discriminate against the smaller consumers and give undue preference to the larger consumers."

The hearings in the proceeding were begun on July 30, 1912, before Commissioner Maltbie, and were continued before me on April 13, 1915, and on subsequent dates. Briefs were submitted on behalf of the complainants and defendant, the final brief of the complainants being filed on July 6, 1916.

In order to ascertain the fair value of the property upon which the company is entitled to earn a fair return, the Commission's

engineers, acting in co-operation with engineers employed by the company, appraised the company's property, and the company's records were also examined by the Commission's accountants and engineers. A voluminous record, containing more than 3000 type-written pages of testimony and 400 exhibits, was thus made.

Rates

On January 1, 1905, just prior to the appointment of a joint legislative committee to investigate the rates for gas and electricity in Greater New York, the Edison Company reduced its maximum price for electricity from 20 cents to 15 cents per kilowatt hour. Following the investigation the Legislature that same year reduced the maximum price to 12 cents per kilowatt hour for purposes other than street lighting (Laws of 1905, Chaps. 732 and 733). On July 1, 1912, the Edison Company reduced the maximum price to 11 cents, which is the present rate (except 12 cents in the case of prepayment meters), with a graduated scale of prices for larger consumers.

The present rate system of the Edison Company is elaborate and complex. The maximum price is 11 cents per kilowatt hour. Nevertheless, service is furnished to certain consumers at less than 2 cents per kilowatt hour for low tension current and about 1 cent for high tension current. Between these extremes the prices paid by different classes of consumers vary widely. Thus, retail customers pay on the average 9 cents per kilowatt hour for lighting but less than 5 cents for current used for power purposes. Large consumers, however, obtain low tension current for lighting and power at an average price of less than 3 cents per kilowatt hour, and a very important group pay less than 2 cents.

Scope of the Proceeding

After all the parties to the proceeding had rested, counsel for the company raised a technical objection with regard to the scope of this proceeding. It is contended that, as the complaint was directed solely to the general rate of 12 cents and the proposed rate of 11 cents, the Commission had jurisdiction under Section 71 of the Public Service Commissions Law only to "investigate as to the cause for *such* complaint", and not to investigate as to the reasonableness of any other rates charged by the company, and that, as the notice of hearing in this case was limited to the com-

plaint in this proceeding, the company had not been given proper notice of any other charges and, therefore, no other questions may be considered.

The rate-making powers of the Commission may be exercised under two general heads. Sections 71 and 72 read in part as follows:

"Upon the complaint in writing * * * of not less than one hundred customers or purchasers of * * * electricity * * * as to * * * the efficiency of the electric incandescent lamp supply, the voltage of the current supplied for light, heat or power, or price of electricity sold and delivered * * * the proper commission shall investigate as to the cause for such complaint * * *.

"Before proceedings under a complaint presented as provided in section seventy-one, the Commission shall cause notice of such complaint, and the purpose thereof, to be served upon the person or corporation affected thereby. Such person or corporation shall have an opportunity to be heard in respect to the matters complained of at a time and place to be specified in such notice. An investigation may be instituted by the commission as to any matter of which complaint may be made, as provided in section seventy-one of this chapter, *or* to enable it to ascertain the facts requisite to the exercise of *any power* conferred upon it. After a hearing *and* after such an investigation as shall have been made by the commission or its officers, agents, examiners or inspectors, the commission within lawful limits may, by order, fix the maximum price of gas or electricity * * * for the service to be furnished. * * * In determining the price to be charged for gas or electricity the Commission may consider *all facts* which in its judgment have any bearing upon a proper determination of the question *although not set forth in the complaint and not within the allegations contained therein* * * *."

Section 66 reads in part as follows:

"* * * Whenever the commission shall be of opinion, after a hearing had upon its own motion or upon complaint, that the rates or charges or the acts or regulations of any such person, corporation or municipality

are unjust, unreasonable, unjustly discriminatory or unduly preferential or in anywise in violation of any provision of law, the commission shall determine and prescribe the just and reasonable rates and charges thereafter to be in force for the service to be furnished notwithstanding that a higher rate or charge has heretofore been authorized by statute, and the just and reasonable acts and regulations to be done and observed * * *."

The complaint in these proceedings refers not merely to the maximum rate, but also to the differences in price of electricity under the general rate and the prices charged to numerous preferred customers. The complaint alleges not only that the maximum rate is too high, but that there is discrimination in the rates charged to different classes of consumers. These proceedings, therefore, come under Section 66 as well as Sections 71 and 72. There can be little doubt that the company in having served upon it the petition of the complainants had adequate notice of the intent of the Commission to examine into the rate schedules and rate practices of the company. The record contains a full statement of the rate schedules of the company, and the sales and revenue under each of them.

The company can claim no more than "reasonable notice" and "reasonable opportunity" "to prepare its defense or objection to the demands of the Commission." (*Matter of Village of Saratoga Springs v. Saratoga Gas, etc., Co.*, 191 N. Y. 123). When the complaint and notice of hearing were served upon the company, it was charged with notice that the Commission would exercise all powers and take all necessary action under the pertinent provisions of the statute.

Corporate History and Intercorporate Relations

The Edison Electric Illuminating Company of Brooklyn, the respondent in this proceeding, is the operating company for a system which has a monopoly of the electric business in the entire Borough of Brooklyn, with the exception of the Twenty-ninth Ward, commonly known as Flatbush. The company was incorporated on March 9, 1887, and obtained its franchise on November 3, 1888, to construct and operate an underground system for the supply of electric current for illumination and power covering the

then City of Brooklyn, the area within the present wards 1 to 28 of the Borough of Brooklyn or about forty per cent of the area of that Borough. On October 30, 1899, the company absorbed through merger the Citizens Electric Illuminating Company of Brooklyn and the Municipal Electric Light Company, companies which had franchises to establish and operate overhead systems for electric lighting in certain wards of the City of Brooklyn. On April 4, 1900, the Edison Company also absorbed through merger the Bergen Beach Light & Power Company. It also controls by stock ownership the Amsterdam Electric Light, Heat and Power Company, which succeeded through purchase under foreclosure on November 10, 1897, to the rights and property of the State Electric Light and Power Company, and which had a franchise to supply current by an underground system in the Borough of Brooklyn but ceased to operate in 1901.

The Edison Company is in turn controlled by the Kings County Electric Light and Power Company, which was incorporated in 1890, and which was granted a franchise on June 23, 1894, to construct and operate an underground system to supply current for electric light, heat and power in the Borough of Brooklyn. The stock of the Edison Company is owned by the Kings County Company and is pledged under a mortgage as security for the payment of ninety-nine year six per cent bonds of the par value of \$5,176,000 issued by the Kings County Company in exchange for the stock of the Edison Company of the par value of \$5,000,000.

On October 30, 1899, the Kings County Company leased its property and franchises for a period of thirty-eight years to the Edison Company. The Edison Company is now the operating company and the Kings County Company the holding and financial company, advancing money as needed to the Edison Company on notes or open account. Under the lease, the Edison Company must use its net annual profits from the operation of its own and the leased property, after paying all taxes and assessments on the latter, for the payment of interest on the Kings County 6 per cent purchase money bonds issued for the Edison stock and the 5 per cent first mortgage bonds secured by the Kings County Company's plant; the remainder of the profits which would otherwise be applicable to dividends on Edison stock is to be turned over to the Kings County Company.

Capitalization and Investment

The Edison system had outstanding on January 1, 1916, in the hands of the public a total capitalization of \$27,709,000. If to this there be added the \$800,000 of interest bearing floating indebtedness, not then capitalized, the total would reach \$28,509,000. This capitalization, exclusive of the securities held within the system, is comprised of the following:

Mortgage bonds	\$11,209,000
Debenture bonds convertible into stock	3,064,000
Capital stock	13,436,000
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Total	\$27,709,000
Bills payable	800,000
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Total	<u>\$28,509,000</u>

These securities, however, stand for more than the property of the system now used for supplying electricity and for much more than the original amount of capital, that is, money and property or services at their cash value received by the companies forming the system in exchange for their securities. This excess is due to the issue of securities for the following purposes:

Edison license	\$ 945,000
Guarantee fund for Edison purchase money bond holders, less system securities in fund	258,000
Securities given to promoters and contractors for property of Kings County Electric Light and Power Company in excess of investment in its plant, about	2,000,000
Securities issued for Amsterdam Company in excess of the value of the property as per appraisal	361,000
Securities issued in excess of the par value of the securities acquired of the Citizens, Municipal and Edison Companies	1,701,000
Stock dividends, Citizens and Municipal Companies	600,000
Discounts and premiums on bonds issued and re-funded	775,000
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Total	<u>\$6,640,000</u>

The original investment in the operating properties of the system was thus less than \$22,000,000.

Profitableness of the Electrical Business in Brooklyn

The electrical business in Brooklyn was successful from its very inception. One of the early companies paid in cash dividends what amounted to an average $12\frac{1}{2}$ per cent per year on its original stock, excluding such as was issued as stock dividends, another paid an average of about 17 per cent per year in cash dividends on its stock also exclusive of that issued as dividends. The Kings County Electric Light and Power Company has, since 1904, paid 8 per cent on its stock. On the actual amount of capital contributed by the security holders in money or in property and devoted by the companies of the system to electrical operations, the total dividends and interest paid have averaged approximately 9 per cent per annum.

Rate Making

Section 72 of the Public Service Commissions Law provides:

"In determining the price to be charged for gas or electricity the commission may consider all facts which in its judgment have any bearing upon a proper determination of the question although not set forth in the complaint and not within the allegations contained therein, with due regard among other things to a reasonable average return upon capital actually expended and to the necessity of making reservations out of income for surplus and contingencies."

In the leading case, *Smyth v. Ames* (169 U. S. 466, 547) it is said:

"What the company is entitled to ask is a fair return upon the *value of that* which it employs for the public convenience."

In *San Diego Land & Town Co. v. National City* (174 U. S. 739, 757), the court used these words:

"What the company is entitled to demand, in order that it may have just compensation, is a fair return upon the reasonable value of the property *at the time* it is being used for the public."

In *Smyth v. Ames* (*supra*) the court lays down certain very general principles to be followed in ascertaining this question of just and reasonable value:

“And in order to ascertain that value, the original cost of construction, the amount expended in permanent improvements, the amount and market value of its bonds and stock, the present as compared with the original cost of construction, the probable earning capacity of the property under particular rates prescribed by statute, and the sum required to meet operating expenses, are all matters for consideration, and are to be given such weight as may be just and right in each case. We do not say that there may not be other matters to be regarded in estimating the value of the property.”

In *Spring Valley Water Company v. San Francisco* (165 Fed. 667, 680) it is said:

“He is entitled to a fair return, not always upon the cost of the property, because it may have cost too much; not always upon the outstanding indebtedness, because it may be in excess of the real value of the property; not always upon the total amount invested, because some portion of that which is acquired by the investment may be neither necessary nor presently useful for the public service.”

In the *Minnesota Rate Cases* (230 U. S. 352, 434) it is said:

“The ascertainment of that value is not controlled by artificial rules. It is not a matter of formulas but there must be a reasonable judgment having its basis in a proper consideration of all relevant facts.”

In exercising the “reasonable judgment” the Commission cannot, however, disregard the authority of judicial decisions in litigation involving the same questions. They are found to be controlling, among others, upon the two most important contentions in this case, those relating to depreciation and going value.

The problem before the Commission is, in the first place, to ascertain the value of the physical property of the Edison Company. But this is only one step toward the determination of the ultimate question of the “fair value” of the property for rate making purposes.

The Appraisal

The Commission through its Electrical Engineer, Clifton W. Wilder, made a detailed inventory and appraisal of the physical property of the Edison Company and through its statisticians and accountants, Dr. Adna F. Weber, Dr. Harry G. Friedman and others, made a careful examination of the accounts and records of the company.

With certain exceptions, to be hereafter considered, the Edison Company offered no objections to the figures submitted by Mr. Wilder; indeed, he made his appraisal in co-operation with the engineers of the company. He undertook, first, to determine the cost of the existing property of the System as of January 1, 1914. To the extent of 65 per cent of the material and labor cost of the property of the Kings County Company, and of more than 70 per cent of the material and labor cost of the property of the Edison Company, the prices were taken from the vouchers or other records of the company. For the remainder, the cost prices were estimated.

The appraisal did not attempt to establish the cost of a plant adequate for the system needs and constructed in accordance with the latest developments in electrical engineering, but was based on the existing property of the Edison system.

The results arrived at are extremely favorable to the company as is indicated by the testimony of the Commission's engineer as follows:

"A general study of prices that we have used all through shows increases in some materials and decreases in manufactured products and, in my opinion, the prices I have used here are equal, if not higher, than prices that could be used in general throughout the appraisal, if we were to figure this on a basis of cost to reproduce as of today".

He also said:

"If you figured on the cost to reproduce the property, say within two or three years, that is, some period within which it might be built, the result of my work would be greater than that, because then we would go to minimum prices for wholesale work".

The appraisal thus establishes not only the original cost of the property of the Edison system, but also the maximum allow-

ance that could be made on the basis of the cost of reproduction new.

Mr. Wilder's appraisal arrived at \$24,573,337 as the cost new of the property devoted to electrical operations on January 1, 1914 (excluding property devoted to non-electrical operations, appraised at \$189,666) and at \$18,812,643 as the cost new less depreciation. These sums embraced land, material and labor costs and allowances for contingencies, incomplete inventory and engineering and superintendence.

PROPERTY OF EDISON SYSTEM DEVOTED TO ELECTRICAL OPERATIONS
AS PER MR. WILDER'S APPRAISAL

Gross Material and Labor Costs	\$22,679,930
Engineering and Superintendence	952,557
	<hr/>
Total Cost to construct	\$23,632,487
Accrued Depreciation	5,760,694
	<hr/>
Cost to construct less depreciation	\$17,871,793
Land	940,850
	<hr/>
Total	\$18,812,643

The amount arrived at by the Commission's engineer as to the cost of the property as of January 1, 1914, excluding property not used for electrical operations, interest during construction and other claims of the company, was approximately \$1,000,000 greater than the cost to reproduce new as of July 1, 1914, to wit, \$23,705,314, which was reported by the companies to the State Board of Tax Commissioners. If account be taken of additions during the intervening six months, the difference would be increased to \$1,500,000. The depreciation accrued on the properties of the system was reported by the company as substantially \$10,500,000, or nearly double the amount of depreciation as calculated by the Commission's engineer. The cost of reproduction less depreciation was stated at less than \$13,500,000 or about \$5,300,000 less than the cost-less-depreciation as found by the Commission's engineer. The appraisal by the Commission's engineer seems, therefore, to be very liberal.

The appraisal as of January 1, 1914, should be increased so

as to cover the cost of additions made during 1914 and 1915. Account must also be taken of interest during construction, organization expense and working capital. The figures submitted by the engineers and accountants of the Commission as the cost to January 1, 1916, including interest during construction and an increased allowance for real estate, is \$27,735,000, the accrued depreciation thereon is calculated at \$7,140,000 and the cost less accrued depreciation arrived at is \$20,595,000.

For organization expenses, the amount submitted on the basis of the record is \$100,000, and the allowance for working capital \$1,000,000. The total is thus approximately \$21,700,000.

Question has been raised with reference to the allowance for the 66th Street generating station included in the figures given above, at approximately \$1,305,000. This station is but little used, and it has been suggested that the allowance for this property should be based on the cost of installing the equivalent generating capacity at the other station of the system, and that in view of the cost of recent additions made at that station, the amount should be about \$500,000. On this basis, the figures for the cost new, less depreciation, would be about \$20,900,000, or approximately \$21,000,000 as of January 1, 1916.

If allowance is made for the 66th Street station at the full amount at which it is included in the appraisal as shown above the figures as of January 1, 1916, would be considerably less than \$22,000,000.

Counsel for the company contend, however, that the valuation to be placed on its property should be \$38,822,000 or about \$17,000,000 to \$18,000,000 more than the amounts indicated above. This is a startling figure, and the basis for it requires careful scrutiny. A comparison of the amounts claimed by the company and the corresponding figures submitted by the Commission is shown on the accompanying table (Table A). The differences may be summarized as follows:

**DIFFERENCES BETWEEN THE CLAIMS OF BROOKLYN EDISON COMPANY AND
AMOUNT SUBMITTED IN BEHALF OF THE COMMISSION**

Valuation of physical property:	
Contingencies, etc.....	\$649,000
Engineering	331,000
Interest during construction.....	55,000
Land	37,000
Other differences	25,000
Total	\$1,097,000
Dépreciation accrued	7,140,000
Property little used (66th St. generating station) less allowance for additions of equal capacity.....	804,000
Property, overhead construction and development expenses, etc., paid for out of operating expenses (less allowance of \$100,000 proposed by Commission's staff).....	4,033,000
Edison license for patents, presumably expired.....	945,000
Working capital	326,000
Cost of unifying the system or establishing monopoly.....	3,287,000
Additional claims for organization costs Kings County Elec-Light & Power Co. (stock issued to Charles Cooper)...	300,000
Total	<u>\$17,932,000</u>

As is usual in rate cases, the differences with reference to the cost of physical property are not great. The divergences arise from claims for "overheads", which include contractor's profit, omissions and contingencies, interest during construction, engineering and superintendence, law expenditures during construction, taxes during construction, general executive costs, insurance during construction and miscellaneous construction expenditures, organization, etc. etc. Allowances for overheads must not be imaginary or speculative or without proof by the utility that it is clearly entitled to them. They cannot be allowed merely on the assumption that an item of overhead or something else like it must have been incurred in the construction of its plant and property. The Commission has allowed for "overheads", where such allowances were justified by the evidence.

Contingencies

The largest item of differences in the valuation of the physical property is about \$649,000 under the head of contingencies and incomplete inventory. What the allowance for contingencies and inventory, etc., should be in any case must depend upon the completeness of the records and the care with which the inventory has been prepared and checked. In these respects, conditions have been

TABLE A

Valuation Claimed by Company and Amount Submitted by Commission's Staff, December 31, 1915

	Company's brief	Commission's statement	Difference
Material and labor cost as per appraisal (Dec. 31, 1913).....	\$22,209,542	\$22,209,542	.....
Contingencies, incomplete inventory, etc. (Dec. 31, 1913).....	1,119,224	470,388	\$648,836
Engineering (Dec. 31, 1913).....	1,283,303	952,557	330,746
Additions, 1914 and 1915.....	2,662,360	2,637,107	25,253
Interest during construction.....	359,648	305,000	54,648
Land	1,197,255	1,160,000	37,255
Total	\$28,831,332	\$27,734,594	\$1,096,738
Deduct—accrued depreciation .....	.....	7,140,000	7,140,000
Net amount	\$28,831,332	\$20,594,594	\$8,236,738
Deduct—amount in excess of service re- quirements (66th St. property)....	.....	804,190	804,190
Net amount	\$28,831,332	\$19,790,404	\$9,040,928
Legal, organization, administration, ex- pense, etc.....	(a) 100,000	100,000	.....
Working capital	1,325,776	1,000,000	325,776
Total.....	\$30,257,108	\$20,890,404	\$9,366,704
Claims for items charged to operations:			
Lamps installed on consumers' premises	\$447,994	.....	\$447,994
Labor setting meters.....	174,949	.....	174,949
Injuries and damages during con- struction	135,064	.....	135,064
Taxes during construction.....	298,996	.....	298,996
Legal, organization, administration expenses, etc.	(b) 1,258,238	.....	1,258,238
Cost of attaching business.....	1,670,861	.....	1,670,861
Workmen's compensation insur- ance deposit	47,257	.....	47,257
Total	\$4,033,359	.....	\$4,033,359
Edison license	\$945,000	.....	\$945,000

(a) Included in larger amount claimed by company, as noted below.

(b) This figure is amount claimed by company (\$1,358,238) diminished by the amount submitted in Commission's statement (\$100,000).

(Continued on Page 195)

TABLE A—Continued

Valuation Claimed by Company and Amount Submitted by Commission's Staff, December 31, 1915—Con.

	Company's brief	Commission's statement	Difference
Cost of unifying system:			
Amounts paid for securities of companies in excess of the value of their tangible property:			
Citizens Electric Illuminating Co..	\$573,811	.....	\$573,811
Municipal Electric Light Co.....	1,020,475	.....	1,020,475
Amsterdam Electric Light & Power Co.	366,788	.....	366,788
Expenses incident to acquisition of Edison Co. stock:			
Bonds issued for expense of Edison Selling Stockholders Committee	175,870	.....	175,870
Stock issued to A. N. Brady for services in purchasing Edison stock	150,000	.....	150,000
Guarantee fund for benefit of purchase money bondholders	1,000,000	.....	1,000,000
Total	<u>\$3,286,944</u>	<u>.....</u>	<u>\$3,286,944</u>
Stock issued to Chas. Cooper in connection with organization of Kings County Elec. Lt. & Power Co.....	<u>\$300,000</u>	<u>.....</u>	<u>\$300,000</u>
Total valuation December 31, 1915	<u>\$38,822,411</u>	<u>\$20,890,404</u>	<u>\$17,932,007</u>

exceptionally favorable to accuracy. The company employed its own engineers who co-operated with the Commission's engineers. It had ample opportunity for cross-examination and the introduction of evidence; and it does not appear that the allowances made by the Commission's engineer were at all questioned by the company's engineers or officers.

In planning work, liberal allowance for contingencies must necessarily be made for imperfect foresight. Our appraisal rests, however, on the proverbially more perfect hindsight. Contingencies, not foreseen at the time work was planned, necessarily entered into the cost registered on the books and records. The allowance here made must therefore be chiefly for imperfect inventory. In view of the relative completeness of the records, the allowances cannot be so large as might be proper, if the appraisal were made without regard to conditions as revealed by the records. There should be no departure from the allowance of the Commission's engineer merely because this or some other Commissions found it proper in other cases and under other circumstances to make a higher allowance. There is no testimony in the record to justify the claim to this allowance beyond the amount fixed therefor.

Engineering

The amount for engineering in the appraisal was based on the cost as established from the records. Counsel for the company argued that the allowance should be made on the percentage found to obtain in more recent years, rather than upon the basis of a longer period, upon the ground that the records during recent years were better kept. The total amount in dispute here is comparatively small. Mr. Wilder allowed 4.2 per cent on the cost of labor and material including contingencies and incomplete inventory. The company contends that the percentage used should be 5.46 per cent. Applied to the basis figures used by Mr. Wilder, the difference is approximately \$286,000. With depreciation deducted, the net difference as of December 31, 1913, would be about \$216,000, and if account is taken of depreciation subsequently accrued, the amount, as of January 1, 1916, would be about \$200,000. Here again there is no evidence beyond what is shown by the books as to what the actual cost of engineering was in earlier years, or the extent to which such costs were at that time included in the price of work done under contract or in operating expenses. There is, therefore,

no basis in the record for the additional allowance asked, and in view of the liberal character of the appraisal, the amount found by the Commission's engineer might well be regarded as adequate. The final results in this case would not, however, be appreciably different if the allowance for engineering were based on the higher percentage claimed by the company.

Interest during Construction

Under the head of interest during construction, the difference between the amount claimed by the company and that arrived at by the Commission is due almost entirely to the inclusion of land by the company in the basis for its calculation. That interest on land is not allowable in a rate case, where the present value of land is used, has been clearly established by the decision of the United States Supreme Court in the Minnesota Rate Cases (230 U. S. 352, 455).

Land

The Edison Company claims not only that a higher valuation should be allowed on real estate but that certain property classed by Mr. Wilder as not devoted to electrical operations should in fact be included in the valuation on which the company is entitled to a fair return. Mr. Wilder's appraisal of the real estate is based on the assessed valuations for 1914. The record also shows the corresponding data for the years 1915 and 1916. The following are the assessed valuations for all land and for land classed by Mr. Wilder as operative property.

	All Land	Land used for electrical operations
1914	\$1,031,850	\$940,850
1915	990,450	900,950
1916	1,006,750	917,250

It was shown that the percentage for equalization applicable to Kings County adopted by the State Board of Equalization in 1914 was 91 and in 1915, 92. The company claimed that real estate at Nos. 370-382 Pearl Street and No. 13 Willoughby Street had been acquired for additions to its office building and Nos. 27-31 Garfield Place for enlarging a substation and that all these properties had already been partly put to use in connection with the company's business and that all would be needed shortly for

this purpose. These properties which Mr. Wilder classes as non-operative he appraised for 1913 as follows:

Location	Land	Material and labor cost	Total
370-382 Pearl Street.....	\$45,000	\$21,764	\$66,764
13 Willoughby Street.....	16,000	12,997	28,997
27-31 Garfield Place.....	5,100	9,369	14,469
	<hr/>	<hr/>	<hr/>
Engineering 4.2%	\$66,100	\$44,130	\$110,230
	.....	1,853	1,853
	<hr/>	<hr/>	<hr/>
Total including engineering.....	\$66,100	\$45,983	\$112,083

The assessed value of these items of real estate remained the same for 1914, 1915 and 1916. With these three parcels included the assessments for lands actually used or to be used for electrical operations were as follows:

1914	\$1,006,950
1915	967,050
1916	983,350

The company called a real estate expert who testified that the value of the land at 66th Street which was assessed at \$356,500 for 1914, and \$314,600 for 1915 and 1916, was \$430,079. This is about 40 per cent in excess of the assessed valuation and nearly four times the original cost, which was \$115,419.

At the close of the testimony the company presented a statement claiming a valuation for its land devoted to electrical operations amounting to \$1,197,255. For the 66th Street land the value used was that testified to by the company's witness. For other land the original cost was taken where known and where not known the assessed value. If the original cost had been adopted in every case where it is shown by the record the total valuation would have been not more than \$882,596, or about \$125,000 less than the assessed value. Of course, to be consistent the same rule should be adopted in all cases. The company should not be permitted to shift from cost to present value, picking and choosing as the one basis or the other yields a higher figure. All land should be taken at its present value or at its cost. The company offered no definite evidence that the land owned by it, other than the 66th Street property, should be valued at more than the amount for which it is assessed. If the percentage adopted for Kings County in 1915 by the State Board of Equalization be taken to indicate the extent to which

the property is undervalued in assessments, the additional allowance on land, other than at 66th Street, would be \$58,152. The maximum allowance in any way justified by the record is as follows:

VALUATION OF LAND

Land at 66th Street (valuation of company's expert)	\$430,079
Other land, assessed value.....	\$668,750
Additional allowance, assuming assessed value to be 92 per cent. of the market value	58,152
Total	726,902
Total land, present value.....	\$1,156,981

This amount includes the properties at Pearl Street, Wiloughby Street and Garfield Place. If, as testified, these properties are reasonably necessary for the service of the public it is proper to include them although perhaps in excess of immediate needs. The total amount for land, including these properties held for additions and extensions, may thus be taken in round figures at \$1,160,000.

It may be noted in passing that this amount is about \$300,000 more than the cost.

Other Differences

Other differences in the valuation of physical property are minor. They are due chiefly to the fact that construction work in progress at the close of 1913, which had been included in the appraisal by the Commission's engineer, is treated in the company's statement as additions made subsequent to December 31, 1913. The company's figures, if adopted, would thus result in a double allowance for such property.

Depreciation

The chief controversy centers about depreciation. The Commission on the basis of the engineer's testimony deducted from the cost new the sum of \$7,140,000 for accrued depreciation to January 1, 1916. The Commission has had before it various theories of the subject which were reviewed at length in the briefs submitted to it. The company maintains that no deduction for accrued depreciation should be made in the valuation of its property, but nevertheless asserts that it should be allowed

to set aside annually large sums for renewals. It adopts this view in spite of the fact that the companies of the system reported to the State Board of Tax Commissioners that the accrued depreciation on their property was between forty and fifty per cent of its reproduction cost.

It has been the consistent determination of the Commission in both capitalization and rate cases to appraise physical property on the basis of present value, deducting accrued depreciation, both physical and functional. Accrued depreciation has been uniformly determined on the so-called straight line basis, and this method has had judicial approval in this state (*People ex rel. Manhattan Railway Company v. Woodbury*, 203 N. Y. 231, 236; *People ex rel. Kings County Lighting Company v. Willcox*, 156 App. Div. 603; 210 N. Y. 479). That depreciation must be deducted in a valuation for rate making purposes is not open to question in view of the decisions of the United States Supreme Court in *Knoxville v. Knoxville Water Company* (212 U. S. 1), and the *Minnesota Rate Cases* (230 U. S. 352).

Counsel for the company ably argued against the application of the depreciation rule in rate valuations, although maintaining the usual claims to appreciation and value represented by securities issued for the nebulous consideration which are discernible only in the "judgment of the corporate directors." But the decision of the Appellate Division of the Supreme Court, First Department, in this State (Clarke, J., with whom concurred Ingraham, P. J., and McLaughlin and Scott, JJ.), in the case of *People ex rel. Kings County Lighting Company v. Willcox* (156 App. Div. 603; 210 N. Y. 479) is a conclusive authority from which this Commission may not deviate, for the deduction of complete and incomplete depreciation, physical and functional, from the reproduction cost new in valuations for rate making purposes. In that case, the Commission made a deduction for depreciation exactly as it has done in this case. The issue was squarely presented to the court and it was never more ably argued on behalf of the utilities than it was by the late Charles F. Mathewson before that court. The court reviewed the question, not alone from the standpoint of constitutional law in an inquiry as to whether property rights of the utility were being confiscated and what, therefore, were the property rights involved, but more particularly from the standpoint whether the order was unreasonable and unauthorized; the court was not

confined to the question whether the rate resulted in confiscation or denial of equal protection, but it also considered whether the determination of the Commission was authorized by legal tests. The court held:

"Mr. Mathewson as *amicus curiae* files an interesting brief presenting an elaborate argument in support of the proposition that as it is conceded that the plant of the relator operates at 100 per cent of efficiency there should be no deduction for so-called accrued depreciation. This term is used to designate somewhat inartificially the liability presently accrued toward the ultimate cost of replacement of still efficient apparatus. He, therefore, repudiates the concession to scrap value and claims that as the company, being a public service corporation, must always keep its plant up to efficiency and must replace property when worn out, it is entitled to a rate based upon 100 per cent efficiency because it will never be allowed to capitalize replacement but must provide it when necessary. It, therefore, must be allowed to provide a replacement fund out of its earnings. He argues that it makes no difference to the consumer whether that fund is actually accumulated and on hand or not because the replacement must be made if there is such a fund from it; if not, by the stockholders directly. If on the other hand the valuation of the tangibles is reduced by a percentage, in this case twenty-one per cent, it can never be provided for in the only proper way—out of earnings.

"We are unable to adopt Mr. Mathewson's interesting theories for these reasons:

1. It seems to be thoroughly established that the value of the tangible property upon which the company is entitled to a rate which will procure a fair and just return is the present value, that is, at the time of the appraisalment for rate-making purposes.
2. That in the absence of accurate evidence as to actual value, the cost of reproduction new takes the place thereof.
3. That, as the property being valued is not new, in order that 'cost of reproduction *new* may represent the actual condition—the amount presently invested—there must be a deduction therefrom.
4. That this represents the amount required to replace

apparatus still in use, but in process of wearing out, at the end of useful service.

5. That this allowance for depreciation has been made in various kinds of cases where present value is required to be estimated."

Furthermore, the court approved the straight line method of computing accrued depreciation as one to be applied by the Commission in a case of this kind.

Property not Used or Useful

The question is raised as to whether the property of the Brooklyn Edison Company is in excess of its present needs for public service, and therefore whether there should be eliminated from the valuation upon which the rate of return is to be based, an amount for such property as is not used or useful for public service. It is well settled that a utility is not entitled to a return upon property not used or useful for service, and that present users cannot be expected to pay a rate sufficiently high to yield a fair return on money invested in excess of the amount reasonably necessary to provide property for the present requirements.

This question arises in connection with the 66th Street generating station of the company included in the valuation of the Commission's engineer at approximately \$1,305,000 as the cost less depreciation accrued. This station is but little used, relative to the investment involved. The record shows that certain additions made to the Gold Street station at a cost of about \$500,000 have provided a greater generating capacity than the total capacity of the 66th Street station, and that further additions to that station were under contract equal to about twice the present capacity of the 66th Street station. It is a fair question whether the allowance for the 66th Street station should not be limited to the cost of adding to the Gold Street station equipment capable of rendering the equivalent service of the 66th Street station, and that the amount found as the cost of property less depreciation be therefore reduced for the excess investment in the 66th Street plant.

It appears that the two stations were built by independent companies and the present system came into possession of them not as the result of a definite plan to provide for the needs of service but as the outcome of the combination of independent companies

formed to eliminate competition. Doubtless this accounts for the fact that throughout the history of the present system, only one of the stations has been used extensively, and that during the last eight years the 66th Street station has furnished but a small part of the current supplied to consumers, the load being carried mainly by the Gold Street station. In this instance, however, the record is perhaps not complete on the cost of additional facilities which might be required for taking over the load now carried at the 66th Street station, the importance of having two stations to ensure continuity of service in emergencies and to provide for the growth of business in the near future. The doubts should in this case be decided in favor of the company in order that there may be no question that it has been dealt with fairly in the valuation of its property. The allowance in this instance made for the present value of the 66th Street station should not be taken as a precedent that property in excess of reasonable needs for service is to be included in ascertaining the fair value of property on which the company is entitled to a return from the rate payers or as precluding the Commission from considering this question anew.

Property, Overhead Construction and Development Costs Charged to Expenses

The other differences between the amount here allowed and the claims of the company relate mainly to overheads and intangibles. Counsel for the company contends that there should be added to the valuation of the property allowances aggregating \$4,033,000 for capital expenditures made out of operating expenses, which, with one exception, are not entered on the books as property. Items of this character are as follows:

Lamps installed on consumers' premises....	\$447,994
Labor cost of installing meters.....	174,949
Injuries and damages during construction..	135,064
Taxes during construction	298,996
Legal, organization, administration expenses, etc.	1,258,238
Cost of attaching business	1,670,861
Workmen's compensation insurance deposit	47,257
Total.....	<u>\$4,033,359</u>

It is conceded by the company that, if these claims were to be allowed, operating expenses and taxes shown by the books would have to be revised and reduced, and the profits as reported correspondingly increased, for it is clear that the same expenditures cannot be both operating expenses and capital outlays. The extent to which the expenses are overstated and the profits understated is indicated by the brief of the company which shows for 1915 "investment expenditures included in operating expenses" amounting to \$304,198. No account is taken in this figure of the labor cost of installing meters during 1915, for which the amount may be estimated as over \$30,000. The total included in 1915 operating expenses for capital outlays, according to the company's theory, is thus over \$335,000.

From the standpoint of rate making, it makes no substantial difference whether the company's claims are sustained or not. If its theory is accepted, the implication is that profits to the extent of \$335,000 have been concealed in its statement of operating expenses for 1915. The profits so concealed are equal to a return of 8% on the items claimed by the company as properly to be included in the valuation of this property. The company's interests are thus sufficiently conserved if its operating expenses covering the items in question are accepted as part of the cost of service to consumers.

The company admits that the amounts at issue have been treated as operating expenses. It does not in these proceedings undertake to restore proper amounts to capital on the basis of a re-examination of vouchers and records but proceeds mainly on hypothetical calculations and estimates. The claims put forward for the purposes of this case are contradicted by its own books, which show that these items have all along been entered as expenses. There is thus little foundation for its contentions.

The accounting provisions of the Commission require that incandescent lamps be charged to expenses. This is property of very short life, and if allowance were to be made for it in the valuation the amount claimed by the company as its cost would have to be considerably reduced in recognition of depreciation. The company has had the option under the accounting regulations of the Commission to charge the labor cost of installing meters as property or as expense, and it has consistently treated the cost as expense.

No injury is done to the company in following its own account-

ing practice and treating as operating expenses the labor cost of installing meters and the cost of lamps installed on the consumers' premises. Theoretically, these expenditures might perhaps be charged to capital, but the practical bookkeeping difficulty involved in keeping track of such a myriad of small items has doubtless led the company to adopt the practice followed generally by similar companies in this District and sanctioned by the Commission, that of treating these expenditures as operating expenses.

The amount chargeable to capital for injuries and damages is uncertain and debatable; the estimate of the company's witness as of December 31, 1914, was \$126,000, whereas the Commission's accountant computed it to be about \$76,000, or 40% less.

The method used in calculating taxes during construction results in inconsistencies and in an unquestionably excessive figure. These amounts have been charged to expenses and have long since been paid for by the consumers. The company has never attempted to segregate taxes applicable to construction from other taxes and it is doubtful whether such a separation can be made. Both as regards injuries and damages and taxes, if the appraisal is to be increased by the amount claimed, the operating expenses as stated on the books must be revised and the profits correspondingly increased, with the result that the increased profits shown by the revision of the accounts would adequately provide for a return on the amount added to the valuation of the property.

The amount asked for legal expenses, organization expenses, administration, etc., rests on no specific evidence to be found in the record. A proper allowance for organization is considered below.

The claim for the cost of attaching business is based wholly on expenditures chargeable under the Commission's accounting orders to expenses, and presumes the right to capitalize permanently all advertising and promotion expenses.

The deposit under the Workmen's Compensation Act represents funds collected under the guise of operating expenses to provide insurance and is very largely invested in New York City bonds yielding a return to the company. To include it in the amount to be used as a basis for rate making would mean the allowance for the difference between the rate of return used in computing rates and the interest earned on the bonds. The practical difference for rate making purposes is therefore small. Logically, the income from this fund should be credited to the insurance reserve, or used to reduce the amount chargeable to the consumer for insurance, and not for the payment of interest or dividends.

It may in fairness be contended that, no matter what are the amounts to be included in the capital accounts under the company's theory, the moneys for the items discussed under this head have been collected from consumers in the rates imposed; and that, therefore, the consumers should not be taxed a second time, for a return on capital which they have contributed. This view strongly appeals to a sense of justice, whatever be the technicalities with regard to title to such property. It is, however, unnecessary in this case to decide this point. The company concedes that its operating expenses cover large outlays for capital. It has been shown above that the amounts so included according to the company's calculations are equal to more than a fair return on the amount here in dispute. If, in the calculation of rates, the Commission refuses to follow the speculations of the company as to capital and expense, but assumes as proper for the purposes of this case the operating expenses as they appear on the books, it is certain that the total amount which the company will be permitted to earn will yield a fair return on all of its property including these doubtful items at the valuation set on them by the company itself.

License under Edison Patents

The company claims an allowance of \$945,000 representing the par value of stock issued for the right to use the Edison patents. Of this amount, \$360,000 was returned by the licensor and distributed in bonuses on securities issued or returned to the Edison Treasury and ultimately paid out to the stockholders as part of a special dividend. The net amount of stock retained by the owner of the Edison patents was, therefore, \$585,000. These patents were issued between 1880 and 1883 and necessarily expired about 1900. Whatever the importance claimed for the original patents when the companies first engaged in business, there is no evidence that the licenses give any substantial advantage to the company at the present time. Patents are property with limited life, and sound accounting requires that their cost be written off within the period of their life. The earnings of the system have been ample for that purpose and they should not be carried on the books after their expiration.

There is no basis in the record for a finding by the Commission that the Edison licenses today represent property used or useful in supplying electrical service to the public, and there-

fore no allowance for them can be made in the valuation. The Legislative committee which, under the direction of Charles E. Hughes, investigated the lighting companies of New York City in 1905, refused to make any allowances for the Edison licenses. The same decision was made in other cases (Fuhrmann vs. Buffalo General Electric Company, 3 P. S. C. N. Y. [2nd Dist.], 739, 766; Re Union Electric Light and Power Company investigation, St. Louis Public Service Commission; Re Milwaukee Electric Railway and Light Company, 10 Wis. R. R. 92).

Working Capital

In addition to its plant, an operating company, the business of which is not run strictly on a cash basis (such as a street railway), must have working capital. Money is necessarily tied up in unpaid bills of consumers for service rendered but not yet paid for and in materials and supplies. The amount required for this purpose is less than the amount charged on the books for expenses or for materials and supplies, because to a certain extent services rendered and supplies furnished to the company are covered by its unpaid bills, unpaid wages, salaries and the like. Thus, a part of the working capital of a company is supplied by its various creditors and involves no carrying charge.

The company makes a claim of \$1,325,776 for working capital. The current assets of the company consist chiefly of cash, materials and supplies and consumers' accounts, and the current liabilities of taxes accrued, unpaid bills, interest accrued, casualty and insurance reserves and consumers' deposits. On consumers' deposits the company is obligated to pay interest at the rate of six per cent per annum. As the company would be obliged to supply an equivalent amount of capital on which it would be entitled to a return, if it did not receive such deposits, no reduction should be made for this item. On the other hand, as a witness for the company points out, under current liabilities consideration may be taken of funds accumulated for the payment of dividends averaging about \$90,000 per month for which no entry is made on the books until dividends are declared. The excess of current assets over current liabilities other than consumers' deposits thus amounted at the close of 1914 to less than \$900,000 and at the close of 1915 to about \$1,060,000, or an average for the year of less than \$1,000,000.

A question in connection with working capital arises with ref-

erence to an item not carried on the books, namely, current delivered to consumers for which the meters have not been read or the bills rendered. The average amount of such unbilled current is estimated by the company's witness as about \$220,000 for 1914, and \$245,000 for 1915. The amount at the close of the year may be estimated on the same basis as \$250,000 for 1914 and \$300,000 for 1915. The company's practice, and the general practice of companies in this district, has been to disregard unbilled current on the books; it is not shown either as revenue or as an asset. If such unbilled business is included among the company's assets, it must also be considered in the revenue and surplus accounts. Thus the surplus as of December 31, 1915, would have to be increased by about \$300,000 and the revenue for the year 1915 by about \$50,000. Unless surplus and revenue are so revised, an allowance for unbilled sales would be one-sided and unjust to the consumer, for the true profits of the business will not be revealed. The operating expenses as reported by the company cover the cost of rendering service whether billed or not; the revenue must therefore show the amount to be received for the entire service, else neither operating costs nor profits are accurately stated. On the basis of the increase in unbilled current during 1915 and the general ratio of expenses to revenue, the expenses applicable to the earnings not entered on the books would amount to about \$25,000. This is equal to a 7 per cent. return on \$350,000, which is more than the amount of unbilled current. The expenses for 1915 as reported by the company thus cover an allowance for return on any difference between the amount claimed by the company for working capital and the amount indicated by its books. If the company's operating expenses, covering also unbilled current, for 1915 are used as a basis for rate-making, then an allowance will be included adequate to yield a proper return on the amount of unbilled earnings. The amount shown by its books as its working capital, namely, \$1,000,000, may thus be adopted in the assurance that the company's interests are not thereby prejudiced.

Franchises

The company claims an allowance for the value of its franchises. It is now well established that franchises cannot be included in a valuation for rate-making purposes. The entire subject has been carefully considered in a recent decision of

the Court of Errors and Appeals of New Jersey, (*Public Service Gas Company v. Board of Public Utility Commissioners, et al.*, N. J. 94 Atl. 634), the reasoning of which should dispose fully of the claims and arguments of the company for an allowance for franchises in this case. That franchises cannot be included is clear from the legislative policy of the State of New York as expressed in Sections 55, 69 and 101 of the Public Service Commissions Law to the effect that—

“* * * the Commission shall have no power to authorize the capitalization of any franchise to be a corporation or to authorize the capitalization of any franchise or the right to own, operate or enjoy any franchise whatsoever in excess of the amount (exclusive of any tax or annual charge) actually paid to the State or to any political subdivision thereof as a consideration for the grant of such franchise or right * * *”

Counsel cites as a precedent for the allowance of franchise value the Consolidated Gas case, apparently overlooking the exceptional conditions involved therein, and the statement of the Court in that case (212 U. S. 19, 44):

“What has been said herein regarding the value of the franchise in this case, has been necessarily founded upon its own peculiar facts, and the decision thereon can form no precedent in regard to the valuation of franchises generally, where the facts are not similar to those in the case before us”.

Cost of Unifying the System

A number of other claims submitted by the company may be grouped under the head of the cost of unifying the system, that is to say, the cost of establishing monopoly. The total for amounts of this character appearing in the statement of the company is \$3,287,000. With this sum may be included \$300,000 claimed for organization expense of the Kings County Electric Light & Power Company, making the total \$3,587,000.

The details are as follows:

Amounts paid for securities of companies in excess of the value of their tangible property:	
Citizens Electric Illuminating Co.....	\$573,811
Municipal Electric Light Co.....	1,020,475
Amsterdam Electric Light & Power Co.....	366,788
Expenses incident to the acquisition of the stock of the Edison Electric Illuminating Co.—	
Expenses of Edison Selling Stockholders' Committee	175,870
Commission to A. N. Brady for purchasing Edison Co. stock	150,000
Guarantee Fund for benefit of holders of Purchase money bonds issued to acquire Edison stock*	1,000,000
Stock issued to Charles Cooper in connection with organization of Kings County Electric Light & Power Co.	300,000
Total.....	<u><u>\$3,586,944</u></u>

* This fund is invested in bonds yielding a return of about 4.7%. The claim of the Company is in effect that consumers should make good to the company the difference between the present return from the securities of the fund and a return on the capital at the rate of 8%, regardless of the fact that no part of the capital is used for electrical service.

It is not even contended by the company that anything was added to property used in supplying electricity to consumers through the financial transactions which led to the establishment of the monopoly enjoyed by the Brooklyn Edison System. With the exception of the last item which will be considered below, all the additions to the capital accounts here noted resulted from the attempt to establish monopoly in the electrical business in Brooklyn. Monopoly value is not to be included for rate-making purposes. (Willcox v. Consolidated Gas Co., 212 U. S. 19.) As stated before, one result of the combination was duplication of plant, and the Commission in taking into the valuation both the 66th Street and the Gold Street plants, has already made an allowance for what might be regarded as a development expense incident to the unification of the system. The additional amounts claimed by the company cannot be allowed. One group of capitalists may pay whatever sum they please for

the securities of another group of capitalists, or incur any expenses they see fit. They cannot, however, thereby impose an obligation on the public to give them a return on whatever amount they might pay for such securities. The public was not consulted. The claim on them for a fair return rests on property devoted to public uses, but not on securities issued.

The result of the legislative policy in this State has been the elimination of competition, the avoidance of duplication and the stabilizing of public utility enterprises. These were the effects sought by the constituent companies of the Edison system in unifying their own enterprises. On the theory of the company, it might therefore likewise be contended that the establishment of stricter regulation which has tended to produce similar results, should also be included in the valuation. The claim of the company in this instance is based upon little more than that value should be placed upon the economy and efficiency in operation which resulted from the unification of the system. Whatever recognition may be due to the companies for improvements in their methods of conducting business, which result in better service to the public, these cannot be valued for rate purposes any more than advanced legislation which promotes the security of investors in utility enterprises.

With reference to the securities issued to Charles Cooper at the organization of the Kings County Company, there is no evidence in the record of any property having come to the company as a result of the transaction. The plant and other assets standing on the books were received in return for stocks and bonds issued to contractors, who built its generating station and turned over to the corporation a certain amount in cash. The cash value of any property received for the securities issued to Cooper or of the services rendered is highly problematic. Any property contributed has necessarily been taken account of in the appraisal. Services in connection with organization and promotion should be considered the same way as similar services for other companies of the system. Counsel for the company has elsewhere set up large claims for organization expenses for the system as a whole; to add to those another claim for securities issued to Cooper is to ask for a duplication of such allowance.

Organization, etc.

The records of the companies forming the Edison system are remarkably complete and they have been gone over carefully both by the company's and commission's accountants. They failed to reveal any considerable outlay for organization expense, for financing, administration and the like. Expenses of this character, if incurred, were met out of current revenue and treated as ordinary expenses; they called for comparatively little outlay of capital by investors. The system was developed by additions year by year and through funds supplied by stockholders with little, if any, expense for underwriting syndicates, financing, or promotion. When originally organized, each of the companies was comparatively small, and promotion or preliminary expenses of a legitimate character could not have been great. It would be well nigh a hopeless task, as the company's own witness admitted on the stand, to attempt to ascertain the expenditures which should have been charged to capital for organization and similar items.

The company, through its counsel, as noted before, claims an allowance of \$1,358,238 for legal, organization, administration, superintendence, trial operation, etc. No evidence whatsoever is adduced in support of this claim. From the figures of the company's counsel, it appears that on his theory there have been included in operating expenses in recent years \$50,000 to \$100,000 per year for organization and similar expenses. If this is so, there are concealed in operating expenses sufficient profits to yield a return at 7 per cent. on an allowance for organization and legal expenses, etc., ranging from \$700,000 to \$1,500,000. The company should, therefore, not be aggrieved if its operating expenses are accepted and thereby allowance made on so large an amount.

For the Commission, no such speculations have been attempted. On the basis of the charges made on the books of the system, it is submitted that a fair allowance would be about \$100,000. No substantial difference in the rates would result if the amount were increased to \$200,000 in order to give the benefit of any doubt to the company.

With the amounts allowed for working capital and organization expenses, the total valuation as of January 1, 1916, for the purposes of this case, even allowing the higher figure indicated above for engineering, would be about \$22,000,000.

Going Value

A claim is made with qualifications on behalf of the company for "going value" as of December 31, 1914, amounting to \$3,636,159. In arriving at this figure it is assumed that the rate should be 9 per cent. for the earlier years of the system and 8 per cent. for the more recent period. Upon the record, if for the purpose of argument the basis of the company's calculations is unquestioned, it is demonstrated that upon a 7 per cent. return throughout the history of the system there was no deficiency in a fair return but that, on the contrary, the public has paid in excess of a fair return approximately \$5,500,000. What rate of return should be taken as fair will be considered below.

In *People ex rel. Kings County Lighting Company v. Willcox* (210 N. Y. 479), which must be accepted as controlling upon the Commission in its determination with regard to "going value," the court said:

"Making proper allowance for the matters just considered and perhaps for others which do not occur to me, I define 'going value' for rate purposes as involved in this case to be the amount equal to the deficiency of net earnings below a *fair* return on the *actual* investment due *solely* to the time and expenditures reasonably necessary and proper to the development of the business and property to its present stage, and not comprised in the valuation of the physical property."

It has been shown that the original amount of capital advanced by security holders and devoted to the properties of the Brooklyn Edison system used for electrical operation was approximately \$22,000,000, that the average annual return on capital so invested from the beginning was nearly 9 per cent., and that the company had on January 1, 1916, property valued, for the purpose of this case, at \$22,000,000, or more than the full amount of original investment. This statement should effectively dispose of the company's claims for "going value".

The conclusions may be summed up in the following table:

PROPERTY OF THE BROOKLYN EDISON SYSTEM			
	1913	1914	1915
Cost of construction, material, labor, contingencies, engineering	\$23,632,487	\$25,126,779	\$26,269,594
Interest during construction.....	285,000	295,000	305,000
Total construction	\$23,917,487	\$25,421,779	\$26,574,594
Accrued depreciation	5,840,000	6,640,000	7,140,000
Present value	\$18,077,487	\$18,781,779	\$19,434,594
Land	1,160,000	1,160,000	1,160,000
Working capital	\$19,237,487	\$19,941,779	\$20,594,594
	800,000	900,000	1,000,000
Organization	\$20,037,487	\$20,841,779	\$21,594,594
	200,000	200,000	200,000
	<u>\$20,237,487</u>	<u>\$21,041,779</u>	<u>\$21,794,594</u>

If the higher figure noted above is adopted for engineering, the total as of January 1, 1916, would be in round numbers \$22,000,000.

With other property of the company not devoted to electrical operations, the amount on January 1, 1916, would be nearly \$22,200,000, or more than the total capital provided by investors for building up the properties of the Edison system. Thus, whether the basis for valuation be the actual capital invested or the present value of the property, the company will be fairly dealt with if rates are based on a valuation of its property of approximately \$22,000,000.

Rate of Return

The company claims that it should be allowed to earn 8 per cent on the valuation. The company produced a witness who gave his opinion that 8 per cent would be a proper rate of return. On the other hand, another witness for the company presented a calculation on the basis of the company's records which shows that the stock and bonds of the system had been issued at prices which involved a cost of money to the system averaging about $6\frac{3}{4}\%$. This computation took no account of the fact that stock paying dividends of 8 per cent and debentures bearing 6 per cent interest and convertible into stock had been issued at par, although the market price for these securities was far in excess of the par. As a result his calculation produced a figure in excess of the necessary cost.

The record contains extensive data on the securities issued, the consideration received, the rate of interest or dividends paid, and the market prices of securities. From this information it appears that the mortgage bonds of the system sell on an approximately 5 per cent basis and that the stock at the prices quoted yield the purchaser less than 7 per cent. With the existing distribution of the capitalization of the system as between stocks and bonds, the average return on the outstanding securities at the prices quoted is approximately 6 per cent.

The United States Supreme Court in the Consolidated Gas Case (212 U. S. 19) held that a return of 6 per cent would not be confiscatory. This position was again taken in 1915 in a case involving a relatively small company, viz., The Des Moines Gas Company (238 U. S. 153). It should be pointed out with reference to the rate of return that regulation and the elimination of competition in the public utility field create a condition of security for capital invested, which should reflect itself in the rate at which capital may be obtained and in the return which the consumer should be required to pay for its use. The position of the Brooklyn Edison system should be exceptionally favorable in this regard. It is located in the money center of the country and has a monopoly of the supply of electric current in a large and very rapidly growing territory. With rates subject to regulation it may feel fairly assured of a reasonable return on capital invested. Risks are reduced to a minimum. Under the circumstances, it is a question whether a return of 6 per cent would not be adequate. A return of 7 per cent is certainly generous.

Assuming 7 per cent to be the proper rate of return, the company should have collected in 1915 on the property in service about \$1,500,000 in addition to the amount necessary for operating expenses, taxes and a reserve for accrued depreciation.

In allowing a return at the rate of 7 per cent, after making very liberal provisions for depreciation, the Commission takes adequate account of the necessity of making reservations out of income for surplus and contingencies. On a capitalization in keeping with the fair value of the property and divided about equally between stock and bonds, a 7 per cent return would permit the payment of 5 per cent interest on bonds, 8 per cent dividends on stock and reserves for surplus and contingencies of about \$100,000. If the rate of dividend were 6 per cent, the annual additions to surplus and reserves would be over \$300,000.

The situation may be seen from the table below calculated on a capitalization of \$22,000,000.

INTEREST, DIVIDENDS, AND AMOUNT AVAILABLE FOR SURPLUS AND RESERVES
UNDER A RETURN OF 7 PER CENT.

Return at 7% on \$22,000,000 capitalization	\$1,540,000
Interest at 5% on 11,000,000 bonds	\$550,000
Dividends at 8% on 11,000,000 stocks	880,000
 Total requirements for interest and dividends.....	 1,430,000
Available for surplus and contingencies.....	<u>\$110,000</u>

In addition to the provision made in the rate of return for contingencies and surplus, the Commission, in revising the rates, as will appear later, leaves a considerable margin in favor of the company.

In the argument before the Commission, Counsel claimed that the company could not maintain its present dividends if rates were lowered to conform to the rate of return and the valuation as found above. The obligations of the public must be based on the requirements of a fair return on fair value, not on the interest and dividends paid on an inflated capitalization. As was said by the United States Supreme Court in *Stanislaus County v. San Joaquin and Kings River Canal and Irrigation Company* (192 U. S. 201, 213):

"It is not confiscation nor a taking of property without due process of law, nor a denial of equal protection of the laws, to fix water rates so as to give an income of six per cent upon the then value of the property actually used, for the purpose of supplying water as provided by law, even though the Company had prior thereto been allowed to fix rates that would secure to it one and a half percent a month income upon the capital actually invested in the undertaking."

Revenues and Expenses

To determine the fair cost of service to the consumer, operating expenses and taxes must be added to the amounts required for depreciation and a fair rate of return. The operating expenses appearing on the books of the Company for 1915 contain items which are not normal, and which should be deducted in order to ascertain normal operating expenses as a basis for rates

to the consumer. Expenditures connected with the rate investigation have been included to the extent of nearly \$70,000. Outlays for this purpose should cease with the termination of proceedings in this case. Other expenses of an extraordinary character or charges not properly applicable to operating expenses amount to about \$25,000. Thus, nearly \$100,000 should be deducted from the expenses appearing on the books, in order to determine what are normal operating charges. In this relation the decision of the Illinois Public Utilities Commission with regard to the treatment of rate procedure expenses is interesting (*Springfield v. Springfield Gas & Electric Co.* (Ill. P. U. C.) P. U. R. 1916 C 281, 397), where the Commission said:

"Since the date upon which respondent's rates were questioned, the current rates for gas in Springfield have been far more than sufficient to compensate the local utility for every reasonable item of expense (including an adequate allowance for return and depreciation). The excess collected during this period is greater by far than the total of both the respondent's and the petitioner's procedure expenses. The Commission finds for the petitioner, that no allowance is to be made to the respondent for extraordinary expenses incurred in this particular rate-making procedure before the Commission. At this time, the Commission is not expressing how it would rule in a case in which the facts disclose no excess revenue to have been collected during the pendency of a rate-making proceeding."

The company asks that it be allowed to include in the cost of service to be covered by the rates, an amount now treated as a charge against surplus, of nearly \$80,000 for 'appropriations to employees for faithful and efficient service.' These expenditures stand for payment to the Brooklyn Edison Investment Fund for the benefit of its employees under a profit-sharing plan. The amount disbursed is dependent upon the rate of dividends paid by the company. If allowance is made for this item in operating expenses, it should be done only with the understanding that such payments will continue at the present rate regardless of the effect of a revision of the rates on dividends.

Allowance is made for annual depreciation, etc., on the basis of the finding of the Commission's Engineer for accrued depreciation,

with adjustments for additions to the property and for overheads. In view of the fact that to an extent minor replacements are taken care of through the repair accounts, the amount here taken into the cost of service for rate-making purposes is sufficient for all purposes contemplated in the Commission's accounting regulations, Account E842, General Amortization—Electric. This amount, or an amount increased in keeping with the growth in the Company's property, is to be provided by the consumers for maintaining the integrity of the Company's investment in property; it is therefore unavailable for any purpose other than that for which the reserve is here provided, and cannot be changed without affecting the basis of the rate structure here proposed.

The following table shows a revised statement of operating revenues and expenses for the past three years and the rate of return on the "fair value" of the property under existing charges for service.

REVISED INCOME STATEMENT AND RETURN ON FAIR VALUE
FOR 1913, 1914 AND 1915.

	1913	1914	1915
Operating Revenues (a).....	\$5,649,696	\$6,239,968	\$6,923,552
Revenue Deductions (Expenses)			
Operating Expenses (b).....	\$2,449,078	\$2,605,906	\$2,771,854
Depreciation etc. (Straight line)...	865,000	930,000	995,000
Taxes	450,032	439,547	469,511
Uncollectible bills	14,062	16,875	23,106
Total expenses	\$3,778,172	\$3,992,328	\$4,259,471
Income from electric operations.....	\$1,871,524	\$2,247,640	\$2,664,081
Fair value (c).....	\$19,575,000	\$20,650,000	\$21,425,000
Rate of Return—Per cent (d)....	9.6	10.9	12.4

(a) After deducting abatements on city bills.

(b) Excluding extraordinary expenses connected with rate proceedings etc.

(c) Average of amounts at the beginning and end of year.

(d) The rate of return here shown is not appreciably affected if the valuation is increased by a higher allowance for engineering involving at the same time some addition to the figure here allowed for depreciation.

The earnings of the company have thus been excessive. The profits from operation in 1915 were adequate to yield a return of 6 per cent on \$44,000,000, or double the amount here found as the "fair value" of the property of the Edison system devoted to electrical operations, and *over 12* per cent on the "fair value" of the property

used to supply electricity in Brooklyn. Rates which permit such profits are excessive and exorbitant. Consumers in 1915 paid the company a return of more than \$2,650,000, whereas the company might fairly have collected from them about \$1,500,000. Consumers are thus entitled to reduction in rates of about \$1,150,000.

Rates

The complaint in this case is that the maximum rate to retail consumers is excessive and that rates to other customers give them undue preference and discriminate unjustly against the smaller consumers. The discussion on property and income has established the fact that the return afforded by the rates now in force is excessive and should be reduced. It becomes the duty of the Commission, therefore, under the provisions of the law to inquire into the entire rate schedule of the company and to fix just and reasonable rates.

The table below shows in condensed form the business of the company with different classes of customers, and the average price paid by them. An appended table presents the data in greater detail.

SALES OF ELECTRIC CURRENT, REVENUE AND PRICE PER KW. HR. FOR YEAR 1915

Classification	Average number of meters for year		Sales Kw. hrs.		Revenue		Av. price per per cent of kw. hr. total (cents)	
	Number	Per cent of total	Amount	Per cent of total	Amount	Per cent of total	Per cent of total	Per cent of total
Residence	28,412	49.0	8,037,180	5.6	\$877,576	12.7	10.919	
Commercial	22,296	38.5	33,080,682	23.0	2,854,287	41.4	8.628	
Advertising	344	0.6	1,074,205	0.7	62,763	0.9	5.843	
Total light....	51,052	88.1	42,192,067	29.3	\$3,794,626	55.0	8.994	
Total power....	5,231	9.1	20,292,552	14.1	967,419	14.0	4.767	
Total retail....	56,283	97.2	62,484,619	43.4	\$4,762,045	69.0	7.621	
Large customers:								
Low tension (a) 1,037	1,037	1.8	37,719,096	26.2	\$1,066,789	15.5	2.828	
High tension....	10	—	29,508,201	20.5	343,321	5.0	1.163	
Total general.	1,047	1.8	67,227,297	46.7	\$1,410,110	20.5	2.098	
Municipal light and power.....	600	1.0	14,286,024	9.9	723,660	10.5	5.066	
Total sales....	57,930	100.0	143,997,940	100.0	\$6,895,815	100.0	4.789	

(a) Includes high tension service to Governor's Island. 215,100 kw. hrs., revenue \$10,104, and also miscellaneous sales of current supplied to 18 meters—viz.: 154,080 kw. hrs., revenue \$6,543.

The schedule of charges for service of the Brooklyn Edison System reveals a very wide divergence between rates paid by different classes of consumers. The great mass of lighting customers pay the maximum rate of 11 cents per kilowatt hour; at the other extreme, a limited number of consumers receive service at prices averaging less than 2 cents for low tension and about 1 cent for high tension current. The rate schedule of the company makes large concessions to quantity consumers. What is the justification for such difference, in the price charged to different classes?

In this inquiry, certain considerations should be borne in mind:

(1) Rates should take account of expenses directly assignable to the individual consumer or to a special class of consumers.

This can be done either directly through a special meter, consumer, or minimum charge, or indirectly through the rate for current. Directly, or indirectly, account should be taken of the cost occasioned by the consumer through the mere fact that he is connected with the company's system, and can at any time demand service, and the expense of whatever special service is rendered to the class of consumers to which he belongs.

(2) Rates to different customers and classes of customers may be differentiated so as to reflect the time and conditions of service.

The central station must be operated so as to furnish service 24 hours a day for 365 days in the year. The plant and organization must be adequate to meet the maximum demand made by the consumers at any time. The maximum load developed as the result of the demands of the consumers lasts for only a part of the day and occurs only during the winter months. In consequence, a large part of the equipment of an electric company is idle or operated below capacity during the greater part of the day and of the year. It is to the interest of a company to develop business involving off-peak service, since energy taken off the peak adds comparatively little to overhead cost for maintenance, return on investment, depreciation and general expenses, and occasions possibly less than the average cost per kw. hr. for direct operating expenses. There is thus commercial justification for differentiating rates according to conditions of service, and for making lower rates for off-peak service. A very large

part of the total cost of service is represented by the requirements for depreciation, maintenance and a return on the general investment of the company and the special investment made for the benefit of individual consumers. Such costs and certain general expenses are in the main fixed and do not vary significantly with the intensity of use to which the property is put. It follows, therefore, that with a given maximum demand on the part of the consumer, each additional hour's use of current involves less than a proportionate increase in cost to the company. Rates to the consumer may therefore take this factor into account, and a higher price may be charged for the initial hour or for the first few hours' use of current per day, than for additional hours of use. Within proper limits, differences in price paid by consumers, based upon differences in time and conditions of use, need not be unjustly discriminatory. A flat rate to all consumers, such as is usual in the gas industry, is not adapted to the needs of the central electric station business.

Differentiation in the price charged according to varying conditions of service presented by classes of consumers must be related to costs attributable to such conditions, else the rates will be unjustly discriminatory. The ascertainment of costs presents, however, extremely difficult problems. The cost of supplying electricity is made up, for the most part, of joint costs, of expenses which cannot be directly allocated to any one class. The outlays which can be more or less directly assigned to classes of customers form a comparatively small portion of the total cost of service—including in cost a provision for depreciation and a return on investment. Expenditures for investment and for operation, which can be allocated to different consumers or classes of consumers, include investment in meters, services and street lighting equipment, expenses attending the operation of meters and billing and collecting customers' accounts; the cost of supplying and renewing incandescent lamps to retail customers; the direct expenses incurred for street lighting; and the like. Examination of the details of the appraisal and of operating expenses, indicates that less than 20 per cent of the cost of service covering a return on the investment, depreciation and operating expenses, permits of reasonably direct assignment to the different classes of consumers. The rest, if apportioned, must be allocated chiefly on the basis of load factors; that is, upon the responsibility of a given class of consumers

for the peak load on the substation and on the generating station of the system. Such allocation presents most complicated problems and results will vary widely with the hypotheses made. From the record it appears that the company has no data or calculations serving as the basis for its rates to different classes of consumers.

The average price paid by retail lighting customers is over three times the average price charged to wholesale customers; in both cases, the service referred to is low tension current. If full account is taken of the special expense chargeable against the retail customers, as indicated by the record, their contribution per kilowatt hour is still more than double that of the wholesale customers. Rates for low tension current would thus have to be justified on uncertain assumptions as to what proportion of property jointly used and operating expenses incurred in common may be applied to particular classes of service.

Within the retail class, lighting customers pay nearly twice as much as power customers. Here too, it does not appear that difference in price can be related to clearly identifiable costs incurred for the benefit of each of these classes of consumers.

The general manager of the Company referring to the costs for the various classes of service testified as follows:

"It is such a complicated question to figure upon, to get within any degree of accuracy the cost of different classes, that it is practically impossible to answer your question; you might pro-rate your expense one way and I might the other way; it is going to be absolutely a question of judgment as to how those questions are to be pro-rated."

As compared with retail rates, rates to large customers are low, and the presumption in this case might well be that they are too low. In general, such rates are made under stress of competition with isolated plants or steam power. Owing to the threatened establishment of isolated plants by large consumers, the pressure on the company is to make rates as low as possible.

The large consumers of current have made no complaint in regard to their rates, and the company has been free to raise them. The complainant, on the other hand, contends that these rates are too low, that they do not pay a fair proportion of the total cost and that they impose an unjust burden on the retail consumers. If the

assumption is that such rates are fair, it follows that the excess of revenue over the requirements of a fair rate of return should be applied to reduce the rates paid by retail customers. If the charge for current to large customers is too low, then retail consumers should have the benefit of even a greater reduction than the present excess over the requirements of a fair return. In either event, it is the retail customers who should benefit primarily in the reduction of the rates.

The table below indicates the extent of the reduction to which retail consumers are entitled, assuming that the rates now made to large consumers (including the City) are just.

COST OF SERVICE INCLUDING A FAIR RETURN IN 1915 AND REVENUE COLLECTIBLE FROM RETAIL CUSTOMERS

Average investment during 1915	\$21,425,000	
Amount required for operating expenses, taxes, depreciation and return at 7%		
Operating expenses, taxes, uncollectible bills		\$3,265,000
Depreciation		995,000
Return at 7%		1,500,000
Total		\$5,760,000
Revenue derived from wholesale customers		
Low tension	\$1,067,000	
High tension	343,000	
City of N. Y.; street lighting	495,000	
High tension and bridge lighting	81,000	
Miscellaneous revenue (merchandising, etc.)	32,000	
Total		\$2,018,000
Revenue to be raised from retail lighting and power customers (including municipal buildings)		\$3,742,000
Retail light and power revenues:		
Light	\$3,795,000	
Power	967,000	
Municipal buildings	147,000	
Total		\$4,909,000
Excess revenue derived from retail customers		<u>\$1,167,000</u>

If the prices paid by large customers are remunerative to the company, then the rates imposed on retail customers are excessive and should be reduced by more than \$1,150,000.

Retail Rates

The retail business of the Brooklyn Edison Company in 1915

was responsible for 43 per cent of the total sales of electric energy, and nearly 70 per cent of the total revenue. Over 97 per cent of the meters in use were in the service of retail customers, who constituted about 99 per cent of the total number of consumers. The most important part of the company's business is retail lighting which alone accounted for over 55 per cent of the entire revenue in 1915.

The schedule of the company for retail lighting is as follows:

- 11c. for the first two hours' average daily use of maximum demand.
- 8c. for the second two hours' average daily use of maximum demand.
- 4c. for the excess over 4 hours' average daily use of maximum demand.

The maximum demand, except in comparatively few cases, is assumed to be a percentage of the capacity of the installation on the consumer's premises or the connected load, viz., 50 per cent for residences and 70 per cent for other premises. In calculating the maximum demand, however, no installation is rated at less than $1\frac{1}{2}$ kilowatts.

The lighting rates cover not only the supply of current, but also lamp service. So called gem lamps are furnished in 30 and 50 watt sizes,—the sizes suitable for domestic purposes. Tungsten lamps are supplied in 100 watt and larger sizes; such lamps are too powerful for ordinary use in homes. Tungsten lamps in smaller sizes may be obtained on payment of 15 cents per lamp. The lighting schedule, moreover, involves a minimum charge of \$12 per year per meter payable at the rate of \$1.00 per month. This amount may be absorbed in the charge made for current at the regular rates. As a result of the minimum charge, consumers who use less than 9 kilowatt hours per month during the year pay more than the maximum rate of eleven cents per kilowatt hour, but no additional burden is thus imposed on the consumer who consumes an average of 9 kilowatt hours or more per month.

In considering the retail lighting schedule, note should be taken of (1) the method of determining the maximum demand of the consumers; (2) the lamp service included in the rates; (3) the minimum charge; and (4) the price per kilowatt hour.

In form, the schedule purports to take into account two factors: maximum demand and the average daily use of the maximum demand during the month. In practice, however, the limitations introduced tend to nullify these considerations in the bills rendered to the great majority of lighting customers. The underlying theory of this system of charging on the basis of maximum demand is that the responsibility of the customer for the general investment of the company is in large measure determined by his demand. As current is used an increasing number of hours per day, there will be no proportional increase in cost to the company for supplying current, for no additional investment is needed. If the rate for the first few hours of service on the basis of maximum demand is made to cover the overhead costs or a large part of them, lower rates may be given to the consumer for current used thereafter. This system of charging involves the ascertainment of the maximum demand of the consumer and the fairness of the charge for service to different customers will depend on the method of arriving at maximum demand.

Maximum Demand

It is apparently impracticable in the case of small customers to resort to special demand meters, owing to the outlay required for such instruments and the cost of operating them. It is, therefore, usual to base the maximum demand of small consumers on estimates or certain percentages of the connected load. The basis employed by the Brooklyn Edison Company is open to very serious criticism. In the first place, the maximum demand is assumed to be at least $1\frac{1}{2}$ kilowatts. The record, however, shows that 85 per cent of the residence lighting customers, and 65 per cent of the commercial customers have installations of less than $1\frac{1}{2}$ kilowatts capacity. It appears further that two-thirds of all the meters of the company have a capacity of $1\frac{1}{4}$ kilowatts or less. The percentages used by the company in calculating the maximum demand are, moreover, in conflict with the schedule used by the company in determining the proper meter capacity for the connected load upon the consumers' premises. According to this schedule, the proper meter capacity for residences and apartments is 25 per cent of the total connected load, and for most commercial establishments it is 60 per cent. For the system as a whole, it appears that the maximum demand is only 30 per cent of the connected load.

Moreover, if account be taken of transmission, transformation and conversion losses, the maximum demand on the generating system is about 25 per cent of the total connected load of all consumers. The diversity in the time of the maximum demand is likely to be greatest among residence consumers; it will not be as great among commercial lighting and power customers. The maximum demand of retail consumers as it registers itself in the actual demand on the company's system is a far lower percentage of their installation than that used by the Company in its schedule of rates.

On the basis of all the information in the record, the percentages of the connected load used for calculating the maximum demand should not exceed the following:

25% for residences.

50% for other premises.

Minimum rating 250 watts.

The adoption of a minimum rating is here suggested for the convenience of the company, in order to avoid the expense of inspection that might result from an attempt to secure exact figures for small installations. A schedule similar to the above was adopted in the Buffalo Electric case. (*Fuhrmann v. Buffalo Electric Co.*, 3 P. S. C. N. Y. (2nd Dist.) 806).

Under the present schedule, the percentages used for determining the maximum demand involve discrimination as between consumers with small installations and those with larger installations. It imposes upon all consumers a charge of 11 cents per kilowatt hour for the first 90 kilowatt hours whether they use current many hours of the day, or only for very short periods. They cannot obtain current at the 8 cent or 4 cent rates on the same terms as consumers with larger installations. The proposed schedule will eliminate, for the most part, the discrimination based upon the size of installations, and allow customers, large and small, to benefit by the lower rates available for long-hour use of current. The complainants criticize the maximum demand basis for electric rates, but the criticism applies mainly to certain features of practice which have grown up in connection with it and which can be properly remedied.

Lamp Renewals

The existing lamp renewal practice of this company is objectionable in that the lamps furnished are mainly Gem Lamps which consume between two and two and a half times the amount of energy required for the same amount of light by tungsten lamps. The subject of lamp renewals has been dealt with at length by the Commission in the recent cases involving the United Electric Light & Power Company and the New York Edison Company (6 P. S. C. N. Y. (1st Dist.), 289). No new features are presented here. The order of the Commission in those cases required the discontinuance of the use of Gem lamps and the adoption of the tungsten lamp as the standard. The Brooklyn Edison Company should conform with that standard, and the consumer should be given the opportunity either to take more light for the same money, or to make a saving on the amount of his electric bill.

In the case of the New York Edison Company, the order of the Commission fixing rates for electricity established a price for current, exclusive of lamps, and that company, as also the United Electric Light & Power Company, undertook to supply lamps under a separate contract at $\frac{1}{2}$ cent per kilowatt hour. With the growing use of electricity for domestic appliances, such as toasters, fans, vacuum cleaners, etc., operated from lighting sockets, it seems proper to separate the charge for current from the charge for lamps. Such a segregation would tend to encourage the use of electricity for domestic appliances, as the consumer of current for such purposes would not be obliged to pay for lamps. Moreover, rapid improvements are going on in the art of lamp making; the gas-filled lamp has been introduced and has, to an extent, displaced the tungsten lamp. A rate for current should therefore be adopted which will leave the consumer free to adopt the most economical type of lamp that may be offered in the market. From the record, it appears that the cost of lamp renewals is approximately $\frac{1}{2}$ cent per kilowatt hour. The company, should, therefore, be given the opportunity to furnish lamps to such consumers as desire the service at $\frac{1}{2}$ cent per kilowatt hour in addition to the charge for current. The standard lamp to be supplied at this rate should be the fifty watt tungsten, which consumes about the same amount of energy as the 50 watt Gem. As the cost of renewals per kilowatt hour

is relatively higher for smaller sizes, the company should be allowed, subject to the approval of the Commission, to make a charge for smaller lamps in addition to the $\frac{1}{2}$ cent renewal rate.

Minimum Charge

The company requires from its lighting customers a guarantee of \$12 per year per meter. The justification for the guarantee lies in the considerations which have led companies and commissions generally to adopt a meter or consumer charge or minimum charge. The mere connection which makes service possible involves an investment on the consumer's premises and certain expenses for maintaining the meter, indexing, billing, etc., regardless of the amount of current consumed. The minimum bill now in effect serves many of the uses of a meter charge or consumer charge, and the practice of the company, may, therefore, be left undisturbed.

Revised Rates

The first requisite of a system of rates from the standpoint of business is that it should yield adequate revenue. If this were the sole consideration, the amount chargeable to the retail customer could be collected under a flat rate without regard to time or conditions of use. Thus, a rate of $6\frac{1}{2}$ cents per kilowatt hour, imposed on retail lighting customers, to cover both the charge for energy and for lamp service, would yield the revenue that may fairly be required from this class of consumers, and the Commission would not be justified in permitting any higher charge. If the average price paid by retail power customers were to be increased, a charge of 6 cents per kilowatt hour would be adequate. The objection to a flat rate is that it takes no account of the fact that certain consumer costs are to a great extent the same for all customers whether large or small. Again, it disregards the fact that consumers using current an increasing number of hours do not impose on the system the same cost for each additional hour's use of energy. A flat rate for electricity means the same price per kilowatt hour to the casual or short-hour customer who is least likely to be profitable to the company, and to the long-hour customer, whom it is to the interest of the company to foster. For these reasons, a flat charge per kilowatt

hour without regard either to the quantity of current taken or hours of use should not be established.

The element of consumer costs which are largely common to all customers, regardless of the amount of current they consume, might be taken care of through a schedule of meter charges. If a monthly charge of 50 cents per meter were imposed as a condition of service, a rate of 6 cents per kilowatt hour would provide the revenue which might be assessed against the lighting customers, or the price for current might be made $5\frac{1}{2}$ cents with a charge of $\frac{1}{2}$ cent per kilowatt hour to customers desiring lamp service. If the meter charge were made higher, the charge for current might be reduced still lower. A schedule of this type would to an extent eliminate the objection to a flat rate applicable to all customers. This system of charging for electricity would still fail, however, to differentiate between the customer who uses current for one hour a day and the one who uses current for three or four hours per day.

In revising the lighting rates, the general system employed by the company of differentiating rates in accordance with hours' use may be approved in principle and higher rates fixed for current used on the average one or a few hours per day than for current used a considerable number of hours. Such a system will tend to stimulate the application of electricity to new uses during the day, particularly in the home, as current for such purposes would in effect be obtainable at a lower price than under a flat rate. In strict logic, it might be desirable to impose a consumer charge to take care of the special investment and special expense more or less directly chargeable to each consumer, and to levy general rates for current varying with hours' use to cover such costs incurred in serving a class as cannot be allocated to the individual consumers. In practice, however, a consumer charge superimposed upon a system of rates based on demand and hours of use would result in a complicated schedule not easily understood by the customer. The company now has in effect a minimum bill which fulfills the chief purposes of a consumer charge; there is, therefore, less necessity in this instance for establishing such a payment. Rates may, accordingly therefor, be fixed subject to a minimum bill of \$1.00, as at present, and the consumer cost included in the price for current.

Counsel for the company alleges that under the present maxi-

imum rate a large group of retail customers do not yield revenue sufficient to cover the expenses of metering and billing and the cost incident to the direct investment chargeable to them, and thus occasion a loss to the Company. The claims of counsel exaggerate the expense of serving the relatively small customer. In estimating the consumer cost he includes outlays for advertising and promotion and apportions such expenses equally among all customers regardless of their consumption of current. Such expenses cannot logically be charged against business that is unprofitable and which presumably the company should not seek or solicit. Counsel has similarly allocated the loss on uncollectible bills equally among all customers, thus making an assumption which does not appear reasonable. He has further charged as part of the consumer cost a return on the investment in a large part of the mains, and the expense of maintaining them. It cannot well be contended that the investment in mains, or the cost of maintaining them can be directly charged against each consumer in the same way as investment in meters or the expense of meter reading. Mains are not installed for individual consumers but for general service, and the investment and operating costs applicable to them should be defrayed through the rates in the same way as other investment and operating costs not directly attributable to individual consumers. Without entering into a detailed examination of the figures presented by counsel for the company, it will be sufficient to note here that if his statement is revised so as to exclude items relating to mains, to advertising and soliciting and to uncollectible bills, the consumer costs shown by him are reduced by more than 50 per cent. It thus appears that the customers now paying the maximum rate do not cause a loss to the Company, but on the contrary pay not only the direct consumer costs, but yield in addition a net revenue of 6 cents per kilowatt hour available to meet operating expenses, taxes, depreciation, and the requirements of a fair rate of return*. This amount, after deducting one-half cent for lamps supplied to retail lighting customers, is still about double the average price paid by wholesale low tension customers. The conclusion here indicated is that the maximum rate paid by this class of consumers is excessive and exorbitant.

Some small customers are no doubt served at a loss, but this class is of limited significance in the retail lighting business.

Moreover, rates must be class rates and not rates for limited groups of consumers, and, within reasonable limits, it is not necessary that each and every member of a class should yield a profit so long as the class as a whole is profitable. The imposition of a very high rate on a limited group or part of a class might be of doubtful expediency if it tended to discourage business from a class highly profitable, taken as a whole. A maximum rate need, therefore, not be so high as to insure a profit on every customer who chooses to take service, particularly when a minimum charge is imposed, which serves to discourage unprofitable business.

*SALES TO CUSTOMERS PAYING MAXIMUM RATE

Kw. hrs. Consumed (per month)	No. of bills	Kw. hrs. used	Amount of bill	Direct cost of service \$1.31 per month (a)	Differ- ence	Direct cost Differ- ence of service per per kw. hr. sold
Under 9.9	7,005	43,510	\$5,784	\$9,177 ** (b)	\$3,392	21.1¢ **7.8¢
10 to 14.9	6,841	81,475	8,939	8,962 **	23	11.0 .0
15 " 29.9	12,676	265,864	29,221	16,605	12,615	6.2 4.7
30 " 59.9	9,064	376,420	41,410	11,874	29,537	3.1 7.8
60 " 89.9	3,066	221,878	24,366	4,016	20,349	1.8 9.2
Total	<u>38,652</u>	<u>989,147</u>	<u>\$109,720</u>	<u>\$50,634</u>	<u>\$59,086</u>	<u>5.1¢</u> <u>6.0¢</u>

** Minus.

- (a) Based on the statement of counsel for the company, excluding however amounts relating to mains, advertising and soliciting and uncollectible bills.
- (b) This loss is overstated, for if these customers' consumption averaged less than 9 kw. hrs. per month during the year, the revenue from them would be \$7,005 instead of \$5,784 and the difference between the direct cost of service here considered and the revenue would be \$2,172 instead of \$3,392.

Under the system of charging for service followed by the Brooklyn Edison Company, the maximum rate is part of a schedule or series of rates. The highest price applies to a consumption of current equal to two hours' average daily use of the maximum demand, and lower rates are charged for additional current purchased. A maximum rate cannot, therefore, be adopted independently of the other rates, which are to form parts of the schedule. As noted above, if a flat rate per k.w. hour were adopted, 6 cents or 6½ cents would be adequate to yield the revenue which should

be collected from lighting consumers. Account should, however, be taken of conditions of service, and long-hour consumers given a lower rate than short-hour consumers; for otherwise rates would be unjustly discriminatory as between various lighting customers. The maximum rate should accordingly be made higher than the average rate, to take account of the relatively greater cost of serving short-hour customers, and lower rates adopted for consumers making intensive or long-hour use of current in respect to their maximum demand. To meet these requirements, the following schedule of lighting rates should be adopted for current (excluding the installation or renewal of lamps).

- 8c. for the first two hours average daily use per month.
- 6c. " " second two hours average daily use per month.
- 4c. " " excess over four hours average daily use per month.

The effect on revenue of the proposed revision of the lighting rates is shown in the following table, based on the sales for the year 1915. Sales of current have been redistributed by hours use, in accordance with the revised ratings of maximum demand, recommended above. This calculation is based on the data for connecting load and current consumed, as reported by the company for the month of April, 1915. The revenue from the lamp installation and renewal charge is here estimated conservatively, being computed on the basis of the present cost to the company of the lamp service, or the amount it would save if it ceased to supply lamps. If all lighting customers paid $\frac{1}{2}$ c. per k.w. hour the revenue from this source would be about \$35,000 more than the figure here used. In order that the calculations might err on the side of safety, no account is taken of revenue which will accrue to the company from the minimum charge, where customers fail to use current up to the amount of \$1.00 per month.

REVENUE FROM RETAIL RESIDENCE AND COMMERCIAL LIGHTING FOR 1915 ON
BASIS OF PROPOSED RATE SCHEDULE

Average daily use per month	Kw. hrs. used (a)	Rate	Revenue
First two hours	17,544,458	8¢	\$1,403,557
Second two hours	9,446,748	6¢	566,805
Excess over four hours	14,000,417	4¢	560,017
Total	40,991,623	(b) 6.2¢	\$2,530,379
Estimated revenue from charge for lamp installation and renewals		.4	165,000
Total revenue: Proposed schedule of rates		6.6¢	\$2,695,379
Present schedule of rates		9.1	3,718,938
Reduction to retail lighting customers		2.5¢	\$1,023,559

Average rate per k.w. hr.	
Present rate schedule	9.1 cents
Proposed rate schedule	6.6 cents
Reduction:	
Amount per k.w. hr.	2.5 cents
Per cent	27.5%

(a) Includes sales to customers with prepayment meters, but excludes break-down service.

(b) Average.

It may be estimated that the reduction to retail lighting customers under the schedule recommended will be upwards of \$1,000,000, and that on the average consumers' bills will be reduced between 25 and 30 per cent.

The charges of the company for advertising service are now below the average retail price provided by the proposed schedule, and these rates need not be disturbed. On the other hand, the rates here proposed should be made applicable also to the City which now pays a retail price of 8c. per k.w. hour for lighting public buildings. While the amount of reduction to the City under the revised rates cannot be accurately determined, it may be estimated at about \$15,000.

Retail Rates for Power

The maximum rate established for current supplied for lighting should be made applicable also to energy supplied for use as power.

The highest price now charged to retail power consumers is 10 cents per k.w. hour. In a limited number of cases, the power service is rendered under lighting rates and a higher price charged.

The schedule of power rates is as follows:

- 10 cents for the first 25 hours monthly use of the maximum demand.
- 5 cents for the second 25 hours monthly use of the maximum demand.
- 3 cents for the excess over 50 hours monthly use of the maximum demand.

The three cent rate is, moreover, subject to a schedule of discounts as follows:

Whenever the portion of the bill figured at 3 cents per k.w. hr. exceeds

\$25,	the discount shall be	5 per cent
50, " " " "	10 " "	
150, " " " "	15 " "	
200, " " " "	20 " "	
300, " " " "	30 " "	
400, " " " "	40 " "	
500, " " " "	45 " "	
1000, " " " "	50 " "	

Intermediate discounts are determined by interpolation.

These discounts are substantially rebates given to a limited number of customers on the basis of the amount of their bills. Quantity discounts are not in keeping with the underlying theory of the company's system of rates; they result in unjust discrimination and should be abolished. If rates below 3 cents are to be allowed on any portion of the current used by a consumer, this should be done directly and not under the guise of discounts. Such rates should take the form of a price applicable to current in excess of a specific number of hours use of the maximum demand and should be equally applicable to all customers using current the same number of hours relative to their maximum demand, regardless of the amount of their bills. The abolition of the schedule of discounts will mean a saving to the company of approximately \$40,000 which will be available for further adjustments by the company in its rate schedules.

The following table shows the sales for 1915 under the maximum demand power schedule, and the significance of a reduction of the maximum rate from 10 cents to 8 cents and the abolition of discounts.

REVENUE FROM SALE OF CURRENT FOR POWER TO RETAIL CUSTOMERS UNDER
MAXIMUM DEMAND CONTRACT, AND CALCULATED AMOUNT ASSUMING
A RATE OF 8 CENTS FOR FIRST 25 HOURS' USE OF MAXIMUM
DEMAND

Use of Max. Dem. per month	Kilowatt hours used	Revenue			
		—Present Rates—		—Proposed Rates—	
		Average Price (cents)	Amount	Rate (cents)	Amount
1st 25 hours	4,561,628.8	10.105	\$460,962.75	8.000	\$364,930.30
2nd 25 hours	3,362,536.2	5.001	168,145.73	5.000	168,126.81
Over 50 hours	12,115,989.9 (a)	2.658	322,014.58	3.000	363,479.70
	<u>20,040,154.9</u>	<u>4.746</u>	<u>\$951,123.06</u>	<u>4.474</u>	<u>\$896,536.81</u>
Reduction	.....	.....	.....	.272	\$54,586.25

(a) 3 cents less discounts.

The establishment of an 8c. maximum rate for current supplied for power, together with the elimination of the schedule of discriminatory discounts will result in a saving to retail power customers of about \$60,000. The average reduction to such consumers will be about 6 per cent; customers now paying the highest rate will, however, save about 20 per cent.

Saving to Retail Customers

As a result of the rate revision here proposed, the total saving to retail consumers may be estimated on the basis of 1915 sales at about \$1,100,000. This is possibly less than the reduction to which such customers are entitled, a margin being left to the company for further changes which it may find necessary or desirable to make in connection with the rate adjustments here proposed.

Rates to Large Customers

The sale of current to large consumers at comparatively low rates absorbs about one-half of the total output of the company. This service presents some of the most complex problems in rate making, and most frequently gives rise to the charge of discrimination. A single large customer may take as much current as is used

by an entire class of small consumers and special efforts are made to secure such business. Large customers are often in a position to instal their own plants or to use other forms of energy and the price made to them is therefore likely to be affected by competition to a much greater extent than retail rates. Large consumers are in a strong position to bargain with the central station and to stand out for favorable rates.

There are two classes of large consumers, those using low tension current and those using high tension current. They may be considered separately.

Large consumers of low tension current are served by the Brooklyn Edison Company under three types of rates: (1) the so-called "wholesale" rate, based entirely on the quantity of current used; (2) the maximum demand rate, based on demand and hours use; and (3) rate "B," based on a fixed price per kilowatt of demand supplemented by a charge per kilowatt hour for current consumed.

The so-called "wholesale" rate is purely a quantity rate for current used for either light or power. It departs entirely from the principle of charging according to the maximum demand and hours use. There is no fundamental justification for a rate of this type. It should be abolished and the customers served under it billed under appropriate light or power schedules.

The maximum demand rate as applied to large customers is part of the schedule under which current is sold to retail power customers. Large consumers may, however, use current under this rate for light as well as for power and secure larger discounts than those generally applicable to the three cent step under this schedule. Moreover, customers whose bills amount to more than \$10,000 per year are allowed additional discounts on this excess ranging from 10 to 30 per cent. In 1915 only two customers benefited by this feature in the rate schedule. Discounts calculated entirely on the amount of the bill, and not on the conditions under which service is rendered, constitute unjust discrimination and should be abolished.

Rate "B" is based on a charge per kilowatt supplemented by a rate per kilowatt hour for current used. The kilowatt hour price varies not with hours of use relative to the maximum demand, but with the gross amount of current taken monthly. This form of charge tends to discriminate between customers served under this schedule on the basis of quantity and is unjust.

The so-called maximum demand rates as applied to large customers and rate "B" should be simplified, and a single rate schedule framed for large consumers, which shall eliminate quantity discounts and variations in price based merely on the amount of current consumed. The company should adopt a schedule which will take account of the consumer's load factor in its relation to the company's peak, and should submit such revised schedule for the approval of the Commission.

Similar considerations apply to the schedules of rates to high tension consumers. Aside from the City, there were 9 customers taking high tension current. One of these, Governor's Island, is billed under the ordinary so-called "wholesale" rate for low tension current, and the charge is accordingly far above the price paid by other high tension customers. The high tension rates, except for service to Governor's Island, are based either exclusively on a charge per kilowatt of maximum demand, or on a maximum demand charge combined with a low rate for current consumed. Two of the contracts make explicit provision for lower rates based on off-peak service. There is here a multiplicity of contracts or modifications of contracts each applying to a single customer or at most, to two or three customers. Such a situation is not satisfactory. The Commission should require the adoption of rate schedules broad enough in their application to cover classes of service rather than individual consumers. Such schedules, particularly in the case of consumers so large, should definitely be based on conditions of service, and not on the amount of annual guarantee or the size of the bill. The company should be required to file a revised schedule or schedules applicable to high tension customers in which rates and discounts based on the amount of the bill or amount of current consumed shall be eliminated and charges shall apply uniformly according to the conditions of service.

The conclusion of the Commission is that the rates of the Brooklyn Edison Company should be changed and revised to conform with the findings herein, and the discriminatory features specified should be eliminated.

In the appraisal and in the findings of the Commission in arriving at the fair value of the property, the commission has allowed a safe margin, resolving doubts in the company's favor.

Similarly, in calculating the reduction to be effected by the revised rates, in the rate of return here adopted, and in the allowance for expenses, ample allowance is made for contingencies. Doubtless the decrease in profits indicated here as a result of the rate changes proposed will in a measure be offset by the increase in the company's business which the record of its growth warrants the Commission in anticipating.

In view of the rapid changes in the electrical business, the order fixing the rates should provide for a period not in excess of one year. With the valuation established, the accounts and records of the company should permit a prompt determination of any questions that may arise from the operation of the new rates here proposed, and for any further modifications that may be required in justice both to the company and the consumer.

These proceedings have been pending before the Commission for more than four years, during which time the company has collected excessive charges to the extent of several million dollars. For these overcharges the consumer has no redress. It is only just therefore that the new rates should go into effect at once and the company should exert every effort to expedite the introduction of the new rate schedules.

(STRAUS, HODGE, WHITNEY and HERVEY. *Commissioners*, concur.)

APPENDIX
SALES OF ELECTRIC ENERGY FOR THE YEAR 1915—EDISON ELECTRIC
ILLUMINATING CO. OF BROOKLYN

	Monthly average number of meters	Kilowatt hours of electricity	Total price Revenue	Average price per kw. hr. (cents)	Rate per kw. hr. (cents)
I. LIGHT.					
Retail residence:					
First two hours' daily use		7,699,513.7	\$853,192.53	11.081	11
Second " " "	28,215	230,739.3	18,444.17	7.994	8
Excess		86,148.1	3,445.92	4.000	4
Total		8,016,401.1	\$875,082.62	10.916	—
Prepayment meters	197	20,779.0	2,493.23	11.999	12
Total residence	28,412	8,037,180.1	\$877,575.85	10.919	—
Retail commercial:					
First two hours' daily use		17,677,622.3	\$1,941,730.31	10.984	11
Second " " "	22,267	7,225,699.2	577,523.26	7.993	8
Excess		8,051,121.5	322,108.80	4.001	4
Total		32,954,443.0	\$2,841,362.37	8.622	—
Breakdown	29	126,239.5	12,924.95	10.238	—
Total commercial	22,296	33,080,682.5	\$2,854,287.32	8.628	—
Advertising	344	1,074,204.7	\$62,763.32	5.843	(a)
Total light	51,052	42,192,067.3	\$3,794,626.49	8.994	—

SALES OF ELECTRIC ENERGY FOR THE YEAR 1915—Con.

II. POWER.

	Monthly average number of meters	Kilowatt hours of electricity	Total price Revenue	Average price per kw. hr. (cents)	Rate per kw. hr. (cents)
Maximum demand:					
First 25 hours' monthly use	5,101	{ 4,541,645.3	\$458,748.55	10.101	10
Second 25 hours' monthly use		3,349,542.2	167,496.03	5.001	5
Excess		12,039,542.5	320,165.56	2.659	3
Total	5,101	19,930,730.0	\$946,410.14	4.748	—
Breakdown	8	169,481.8	8,886.37	5.243	—
Total maximum demand	5,109	20,100,211.8	\$955,296.51	4.753	—
Auto charging	7	109,424.9	4,712.92	4.307	10, 5, 3
Retail power	110	38,372.1	4,457.22	11.616	11, 8, 4
Retail power (including breakdown)	5 (b)	44,543.4	2,952.53	6.628	10, 5
Total power	5,231	20,292,552.2	\$967,419.18	4.767	—
III. GENERAL (large contracts)					
Wholesale (guarantee, \$2,400 yearly)	669	5,583,432.7	\$317,540.47	5.687	6, 5, 4
Max. demand (" ")	223	7,096,729.0	245,111.33	3.454	10, 5, 3
" " (" " \$6,000 ")	16	733,609.7	21,376.00	2.914	10, 5, 3
" " (" " \$10,000 ")	11	1,548,435.0	41,238.96	2.663	10, 5, 3
Rate "B", low tension (guarantee, \$3,360 yearly)	100	22,602,749.7	434,979.71	1.924	(c)
Untransformed A.C. ("non-peak rider")	1	4,510,000.0	77,931.66	1.728	(d)
" " ("limited hour service")	3	10,162,401.0	104,563.89	1.029	(e)
" " ("high load factor")	5	12,892,800.0	135,141.20	1.048	(f)
" " (railroad)	1	1,943,000.0	25,684.37	1.322	(g)
Fire alarm	...	...	152.81	—	(h)
Miscellaneous	18	154,079.6	6,390.43	4.147	—
Total general	1,047	67,227,296.7	\$1,410,110.83	2.098	—

SALES OF ELECTRIC ENERGY FOR THE YEAR 1915—*Con.*

IV. MUNICIPAL.

	Monthly average number of meters	Kilowatt hours of electricity	Total price Revenue	Average price per kw. hr. (cents)	Rate per kw. hr. (cents)
Street lamps	...	10,136,187.2	\$495,211.48	4.886	—
Bridges	(i) 13	759,193.4	23,005.76	3.030	—
Buildings	(i) 379	1,594,981.9	113,883.82	7.140	(j)
Total light	(i) 392	12,490,362.5	\$632,101.06	5.061	—
Power (buildings)	(i) 199	592,046.0	33,582.02	5.672	(j)
" (fire and pump stations)	(i) 9	1,203,616.0	57,977.68	4.816	—
Total municipal	(i) 600	14,286,024.5	\$723,660.76	5.066	—
Grand Total	57,930	143,997,940.7	\$6,895,817.26	4.789	—

(a) Rates vary with style of lamp and type of service.

(b) Obsolete rate; cancelled June 15, 1914.

(c) See Rate "B," schedule of rates, appendix I.

(d) Guarantee, \$24,000 a year. (See untransformed alternating current, schedule of rates, appendix I.) The single customer under this form of contract is J. N. Robins Dry Dock & Repair Co. (Exhibit 265.)

(e) Guarantee, \$50,000 a year. (See Rate "C," schedule of rates, appendix I.) The only customer under this form of contract is American Manufacturing Co. (Exhibit 265.)

(f) Three customers (Bay Ridge Ice Co., India Wharf Brewing Co. and Reid's Ice Cream Co.—Exhibit 265)—at rate of \$80 a year for each kilowatt of maximum demand, guarantee, \$12,000 a year; one customer (Tidewater Paper Mills—Exhibit 265—at rate of \$70 a year for each kilowatt of maximum demand, guarantee, \$45,000 a year; (see Rate "D," schedule of rates, appendix I). Also one customer at rate of \$60 and \$52 a year for each kilowatt of maximum demand. (See East River tunnel construction, schedule of rates, appendix I.)

(g) Guarantee, \$10,000 a year (see schedule of rates, appendix I). The only customer under this form of contract is the Manhattan Bridge 3¢ Line.

(h) \$15 for service connection and an additional energy charge of \$1 per month for each year circuit.

(i) Number of meters for December.

(j) Uniform lighting rate, 8 cents per kw. hr.; uniform power rate, 6 cents per kw. hr. Wholesale rate for light and power, without maintenance, 6, 5, 4 and 3 cents.

MANHATTAN BRIDGE THREE CENT LINE, Complainant, *against*
THE BROOKLYN AND NORTH RIVER RAILROAD COMPANY,
Defendant—"Route, service and rates of fare between the
termini of the Manhattan Bridge".

CASE No. 2063

Determination of the Commission—Operation of Bridge Locals and Through Cars Over Manhattan Bridge—Resettlement of Order to Conform to Opinion.—The Opinion previously adopted by the Commission in the Case herein requiring the through operation by the respondent of all cars over the Manhattan Bridge to Fulton Street, Brooklyn, cannot be altered upon the additional evidence presented at the rehearing, but the Order entered pursuant thereto will be resettled to conform to the Opinion and to provide that the respondent discontinue (1) carrying passengers from Manhattan beyond the Brooklyn Terminal of the Manhattan Bridge for less than five cents; (2) carrying passengers from Brooklyn east of the Manhattan Bridge to Manhattan for less than five cents; and (3) terminating the operation of any cars at either terminal of the Manhattan Bridge.

Hearings closed July 27, 1916. Opinion adopted November 29, 1916.

On June 1, 1916, the Commission adopted an Opinion of Commissioner Hayward, in Case No. 2063, directing The Brooklyn and North River Railroad Company to cease certain practices in connection with the operation of cars over the Manhattan Bridge, which were in violation of the provisions of its franchise. The Order entered by the Commission on the same day was at variance with the Opinion adopted, in that the second clause of the Order prohibited the Company from carrying three cent passengers from any point west of the Manhattan terminal of the Manhattan Bridge to the Brooklyn terminal of said bridge.

By petition dated July 6, 1916, The Brooklyn and North River Railroad Company requested a rehearing, which was granted by an Order entered July 13, 1916. After the rehearing held on July 27, 1916, the Commission adopted on November 29, 1916, another Opinion of Commissioner Hayward confirming his previous Opinion in the case and entered an Order resettling the previous Order so as to conform to the Opinion adopted. The Order as amended provided as follows:

- (1) That the Brooklyn & North River Railroad Company forthwith discontinue receiving passengers at the Manhattan terminal of the Manhattan Bridge and at points west thereof and transporting such passengers to any point in the Borough of Brooklyn beyond the Brooklyn terminal of the Manhattan Bridge for a rate of fare less than five cents for one continuous ride.

(2) That the Brooklyn & North River Railroad Company forthwith discontinue receiving passengers at any point in the Borough of Brooklyn east of the Brooklyn terminal of the Manhattan Bridge and transporting such passengers to the Manhattan terminal of the Manhattan Bridge or to any point west of said Manhattan terminal at a rate of fare of less than five cents for one continuous ride.

(3) That the Brooklyn & North River Railroad Company discontinue terminating the operation of any of its cars at the terminal of the Manhattan Bridge in the Borough of Manhattan or at the terminal of the Manhattan Bridge in the Borough of Brooklyn, to wit, the intersection of Bridge Street and Flatbush Avenue Extension.

Arthur DuBois, for the Commission.

James L. Quackenbush, by *Arthur G. Peacock* and *Chas. L.*

Woody, for The Brooklyn and North River Railroad Co.

Almet Reed Latson, for the Manhattan Bridge Three Cent Line.

HAYWARD, *Commissioner*: After re-examination of the record in this proceeding, including the petition for rehearing and the transcript taken at the rehearing, the Commission does not find sufficient ground for altering the general conclusions reached in the previous opinion. On the contrary, a statement of additional facts would support the opinion already expressed.

However, the order entered in this proceeding on June 1st, 1916, did not conform to the conclusions of the opinion approved by the Commission on the same day, in that it prohibited The Brooklyn and North River Railroad Company from receiving passengers for transportation between a point in Manhattan and the Brooklyn terminal of the Manhattan Bridge at a fare of less than five cents.

This, our previous opinion held, was not prohibited by the franchise of The Brooklyn and North River Railroad Company and our further examination into the question does not alter the general conclusion.

An order should therefore be entered modifying the original order of June 1, 1916 so as to direct as follows:

(1) That The Brooklyn and North River Railroad Company forthwith discontinue receiving passengers at the Manhattan terminal of the Manhattan Bridge and at points west thereof and transporting such passengers to any point in the Borough of Brooklyn beyond the Brooklyn terminal of the Manhattan Bridge for a rate of fare less than five cents for one continuous ride.

(2) That The Brooklyn and North River Railroad Company

forthwith discontinue receiving passengers at any point in the Borough of Brooklyn east of the Brooklyn terminal of the Manhattan Bridge and transporting such passengers to the Manhattan terminal of the Manhattan Bridge or to any point west of said Manhattan terminal at a rate of fare of less than five cents for one continuous ride.

(3) That The Brooklyn and North River Railroad Company discontinue terminating the operation of any of its cars at the terminal of the Manhattan Bridge in the Borough of Manhattan or at the terminal of the Manhattan Bridge in the Borough of Brooklyn, to wit, the intersection of Bridge Street and Flatbush Avenue Extension.

It is not our function to indicate the methods which shall be employed by the Brooklyn and North River Company to comply with the obligations which it assumed under its franchise and the Order of this Commission, and we shall assume that upon the entry of the Order upon this rehearing the Brooklyn and North River Company will adopt effective means to prevent three cent passengers from being carried beyond the Brooklyn terminus of the bridge.

TAXPAYERS' ALLIANCE OF THE BRONX, Complainant, *vs.* THE NEW YORK CENTRAL RAILROAD COMPANY, Defendant

CASE NO. 2148

Rates—Railroad Corporations—Commutation Rates—Monthly Tickets and Rates to Woodlawn Unchanged—Complaint Dismissed.—Upon a complaint of the Taxpayers' Alliance of the Borough of The Bronx that the commutation to Woodlawn of \$5.90 per 62 trip tickets good for one calendar month was excessive and recommending that the 62 trip tickets at the above rate be made valid for two calendar months or that monthly tickets at said rate be purchasable any day of the month, HELD,—that as rates to Woodlawn are not higher than to other places on the same or other railroads at the same distance, they are not excessive; that bi-monthly tickets for the same number of rides and the same prices as the monthly ticket would take the service out of the commutation class and would establish a low wholesale ticket rate; and that because of the short ride to Woodlawn and the necessity to quickly identify said tickets the rule of issuing monthly tickets for the calendar month should not be changed and the complaint should be dismissed.

Hearings closed November 9, 1916. Opinion adopted December 6, 1916.

The Proceeding arose out of a complaint of the Taxpayers' Alliance of the Borough of The Bronx against the commutation rates of The New York Central Railroad Company to Woodlawn, and was started by an Order entered by the Commission on October 19, 1916, directing a hearing in the matter. Hearings were held on October 30 and November 9, 1916, and on December 6, 1916, the Commission adopted an Opinion of Commissioner Hodge, and entered an Order pursuant thereto, dismissing the complaint.

Arthur DuBois, for the Commission.

C. W. Schmidtke, for the Taxpayers' Alliance of the Borough of The Bronx.

F. L. Wheeler, for The New York Central Railroad Co.

HODGE, Commissioner: The petition of the Taxpayers Alliance of the Bronx asked the New York & Harlem Railroad Company (N. Y. Central R. R. Co.) to extend the period of time in which to present monthly commutation tickets from one to two months and that such tickets may be purchased any day of the month with a possible reduction in the price. Very little evidence was presented by the complainants and their case was rested on the theory that because of the geographical situation at Woodlawn and because of the difficulty of access to rapid transit lines the Woodlawn commuters should be given a lower rate and a form of commutation different from that in force on any other part of the line. Woodlawn is a little more than twelve miles from Grand Central Station. The monthly charge for a sixty-two ride commutation ticket is \$5.90. The commutation is in the form of a card which is good for a calendar month and which is punched as used. At the expiration of the month or when the sixty-two rides have been used the card ceases to be valid. The complainants wish to have the card either good for two calendar months or to have it possible to purchase the card on any day of the month, and to be good for thirty days from purchase. The Railroad Company officials explained that owing to the short distance, and the difficulty of examining tickets, it was essential that the conductor be able to recognize by a glance whether a commutation ticket had or had not expired. Testimony was given showing that a very large number of commutation cards had been seized because of fraudulent use by commuters.

A comparison of the Woodlawn rate with the rates charged by the New York Central and by other railroads for about the same distance convinces me that the rate is no higher than the average rate from New York and is if anything a little below the average of many stations considered. The commutation from Jamaica on the Long Island Railroad Company to the Penn. Terminal, 11.3 miles, was shown to be \$8.00. Newark, 9 miles from New York, had a \$5.65 rate; Elizabeth, Spring Street Station on Central Railroad of N. J., 12 miles, has a \$6.00 rate; Little Ferry on N. Y. Susquehanna & Western, 12 miles, has a \$5.85 rate; Passaic Park on the Erie Railroad, 12 miles, has a \$6.15 rate; Brick Church, 11.6 miles on the D. L. & W. has a \$6.10 rate.

As to the request of complainants that commutation tickets be good for sixty days, I am of the opinion that such a rule would take the service out of the commutation class. The low commutation rate is based on the principle that a regular rider who uses the road every day should secure a low rate because of the advantages accruing to the railroad from having regular users resident upon its lines, and to issue a commutation rate to a man who made a round trip every other day would be no more or less than selling a large number of tickets wholesale at a low rate. This form of transportation is offered to the public in the form of family or fifty trip tickets, though the rate is much higher than commutation rates.

The third and last request of the complainant is that the commutation tickets be issued on any day of the month desired by the rider good for thirty days from that day. Although the N. Y. N. H. & H. R. R. Co. does issue a commutation ticket good for thirty days from day of application, I am convinced that the general practice is to issue a commutation for calendar months only and that in the case of the New York Central Railroad the shortness of the ride and the necessity for quick identification of the cards is sufficient reason for the rule as to the beginning of the commutation period. The N. Y. N. H. & H. R. R. Co. does no passenger commutation business within the City of New York and the conductor has ample time to examine the ticket books.

For the reasons given above I recommend the dismissal of the complaint.

(STRAUS, *Chairman*, and WHITNEY, *Commissioner*, concurring; HAYWARD and HERVEY, *Commissioners*, absent.)

In the Matter of the Hearing on the Motion of the Commission on the question whether THE BROOKLYN HEIGHTS RAILROAD COMPANY, the BROOKLYN, QUEENS COUNTY AND SUBURBAN RAILROAD COMPANY, the CONEY ISLAND AND GRAVESEND RAILWAY COMPANY, THE CONEY ISLAND AND BROOKLYN RAILROAD COMPANY, the NASSAU ELECTRIC RAILROAD COMPANY, the SOUTH BROOKLYN RAILWAY COMPANY and the BRIDGE OPERATING COMPANY should be required to purchase or provide additional surface cars.

CASE No. 2097

Cars of Street Railroad Corporations—Insufficiency of Cars—A condition of overcrowding which persists when all the cars fit for operation are in use, is attributable mainly to the insufficiency of equipment.

Service Standards—Street Railroad Corporations—Adequate Service Required by Law.—While the Commission has ample authority to order the purchase of new cars, the duty of providing adequate service continues under the law, and the entry of an Order is not to be construed as establishing a precedent that said duty does not exist in the absence of an Order.

Service Standards—Street Railroad Corporations—Additional Cars Required for Increasing Traffic.—An increase in the number of closed cars on the lines of the respondents from 1823 in 1908 to 1943 in 1915 to meet an increase in the number of passengers carried during the same period from 274,766,791 to 354,700,113 indicates that the additions made to the accommodations have not kept pace with the requirements of increased traffic, especially since the service was already in 1908 the subject of repeated complaint and criticism.

Service Standards—Street Railroad Corporations—Disproportionate Increase of Cars to Traffic Remediable by Adjustments in Operation.—More frequent operation of cars, limiting points of operation to points of maximum load and substitution of cars of greater capacity may remedy a disproportionate increase of cars to traffic.

Cars of Street Railroad Corporations—Retirement for Repairs and Reserve—Margin of 8 Per Cent Required.—A margin of 4.8 per cent of cars over rush hour operation is inadequate to meet the exigencies of service, and efficient passenger requirements should provide for a margin of 8 per cent to be kept in reserve for repairs and emergencies, the requirement herein being at least 30 additional cars of 58 passenger capacity for the purposes of reserve.

Service Standards—Street Railroad Corporations—Provision for Maximum Demand Required.—The duty of a street railroad to provide adequate service is not discharged by furnishing sufficient means for accommodating the traffic actually transported, but it must be prepared to meet the reasonable requirements of the immediate future, and make provision for the maximum demand rather than for the minimum demand.

Cars of Street Railroad Corporations—Small Cars Unsited to Metropolitan Operation.—It appeared that the respondents had 90 cars

with a seating capacity of only 24 to 26 passengers each and 511 cars with a seating capacity of 30 passengers each. HELD,—that the former type of cars has become obsolete for metropolitan operation, that congestion thereon is most frequent and constitutes during the winter a hygienic menace, while the latter type is also too small for Brooklyn conditions and should be gradually replaced.

Service—Street Railroad Corporations—Adequate Service Not Dependent upon Rates of Return.—The contention of the respondents that adequate service cannot be supplied because a proper rate of return is not allowed for that kind of service cannot be sustained as that would reverse the existing law that a fair rate of return is predicated upon adequate service, and that adequate service is a positive duty not dependent upon the ability to earn a fair rate of return on the investment.

Service Standards—Street Railroad Corporations—Excessive Percentage of Standees.—The operation of surface cars during rush hours with standing passengers of from 60 to 100 per cent of seating capacity is not approved, and excess loading has not by long continuance ripened into a prescriptive right so as to relieve the carrier from the duty of safeguarding the health of passengers against the deleterious effects of overcrowding.

Regulation—Service of Street Railroad Corporations—Health Ordinances not Proper Regulating Mediums.—Health Ordinances which limit the number of passengers on a car without providing facilities for those left off regulate the public and not the carriers, causing great inconvenience to those compelled to wait an unreasonable length of time, and the proper remedy is to compel the carriers to provide additional facilities so that all may be transported with a fair degree of comfort and expedition.

Regulation—Hygienic Condition of Cars—Heating and Ventilation of Cars Subject to Health Regulation.—Undue attention to the proper heating and ventilation of cars, which affect the health of all passengers whether seated or standing and are proper subjects of health regulation, ignores the hygienic welfare of said passengers.

Service—Street Railroad Corporations—Improvements in Service with Larger Cars.—The contention of the respondents that traffic congestion and track layout at Borough Hall and on the Williamsburg Bridge will not permit of increase in the rush hour service cannot be sustained in view of the fact that the respondents operate but 101 of the large cars with a seating capacity of 58 passengers each, for if an additional number of such cars were installed a substantial improvement would be effected at congested points and the displaced cars could be operated on lines where no physical limitations exist.

Cars of Street Railroad Corporations—Inadequacy of Cars—250 Additional Cars Required.—While the opening of new rapid transit lines will shift the tides of travel and relieve the pressure on some surface lines, the respondents are not justified in their expectation that such a decrease in surface traffic will occur as to stop overcrowding. Without attempting, however, to eliminate standing passengers during rush hours, and having in mind that a smaller number of the new type cars will replace the obsolete cars to be retired, the Commission will require that a minimum of 250 additional cars be provided.

Cars of Street Railroad Corporations—Type of Cars—Large Center Entrance Cars to be Installed.—The new cars to be installed should be of the large center entrance type with a seating capacity of 58 passengers each, as such cars tend to decrease the number of accidents and effect economy of operation.

Cars of Street Railroad Corporations—Distribution of New Cars.—

The total number of cars to be acquired should be apportioned among the respondents in proportion to the number of additional cars required for the purpose of providing seats for passengers.

Cars of Street Railroad Corporations—Additional Cars—Entry of Order.—An Order should be entered requiring the purchase of 250 additional surface cars for operation during the season of 1917-1918, but not later than February 1, 1918.

Hearings closed June 9, 1916. Opinion adopted December 13, 1916.

This proceeding was started by a Resolution adopted May 4, 1916, directing a hearing to determine whether the companies in the Brooklyn Rapid Transit System operating surface cars should be required to purchase additional closed cars for winter operation. The hearings were concluded on June 9, 1916, and on December 13, 1916, Commissioner Whitney presented an Opinion recommending the entry of an Order to require the purchase of 250 additional surface cars, which was unanimously adopted.

The form of the Order to be entered was referred to Commissioner Whitney for settlement after conference with the companies.

The further facts in the matter are set forth in the Opinion adopted.

Harry M. Chamberlain, for the Commission.

D. A. Marsh, for the Railway Companies.

Cornelius M. Sheehan, for the Allied Board of Trade of Brooklyn.

WHITNEY, Commissioner: This is a proceeding to inquire whether the street railroad carriers of the Brooklyn Rapid Transit System operating lines in the Borough of Brooklyn should be required to provide additional cars for Winter operation. During the Summer season the use of open cars, as well as closed cars, enables the operation of a greater number than that available during the Winter season. As the companies utilize during the rush hours all the cars fit for operation, the present conditions of overloading and inadequate service are attributable mainly to the insufficiency of the equipment used.

In an earlier proceeding before this Commission, Case No. 1438, to which all the companies of the present system, excepting the Coney Island and Brooklyn Railroad Company which was not then a constituent of the system, were parties, the Commission on Janu-

ary 26, 1912, made an Order requiring the companies to purchase or provide one hundred new cars suitable for Fall and Winter service. (Re. Additional Cars on Brooklyn Lines, 3 P. S. C. R.—1st Dist. N. Y.—37.) This was not the maximum number which the evidence at that time showed to be necessary, but the Commission then pointed out and now repeats that:

“The Commission undoubtedly has ample authority to Order the companies to purchase new cars. However, the duty of providing adequate equipment rests primarily upon the companies under the law, and unless excused therefrom they should provide the necessary equipment for adequate service without any Order of the Commission. The passage of this Order, therefore, must not be regarded as establishing a precedent under which the companies may claim that they are relieved of that duty in the absence of such an Order.”

Notwithstanding the Opinion of the Commission, the companies appear to have made practically no additions beyond those ordered by the Commission.

Subsequently, the Commission discontinued further proceedings in Case No. 1438, upon the ground that “all the undetermined matters” involved in that proceeding were being considered by the Commission in other proceedings. The instant proceeding, was, therefore, instituted by the Commission for the purpose of further investigation.

The evidence in this Case shows that the companies have 1943 closed surface cars, with the following seating capacity:

No. of Seats	No. of Cars
58	101
56	1 Articulated Car
48	451
38	12
36	82
34	553
32	141
30	511
26	82
24	8
12	1 Parlor Car
	<hr/>
	1,943

This difference in car capacity should be noted because it has an important relation both to the existing service and to the service which the companies could and should provide.

In 1911, the companies in this proceeding had 1,841 cars, whereas they now have 1,943. The number of passengers carried in 1915 was 14.87 per cent. greater than the number carried in 1911. Had the number of cars increased in the same ratio as the number of passengers, the companies should have added 273 cars of 37 passenger capacity or 172 cars of 58 passenger capacity. By the time cars could be obtained, if ordered now, the requirements on this score alone would justify the additional cars ordered herein. There has been a steady increase in the riding on the Brooklyn surface lines coincidently with growth in the population.

The increase in traffic on the Brooklyn surface lines from 1900 to 1915, inclusive, is shown by the following table:

Year	Brooklyn Surface
1900	204,106,397
1901	209,119,668
1902	216,594,408
1903	223,433,771
1904	233,184,407
1905	242,780,611
1906	265,204,811
1907	262,460,253
1908	274,766,791
1909	275,038,827
1910	289,308,085
1911	305,977,350
1912	322,321,981
1913	345,987,401
1914	351,905,284
1915	354,700,113

The number of closed cars controlled by the Brooklyn Transit System including the Coney Island and Brooklyn Railroad Company, during the period from 1908 to 1915, inclusive, has been as follows:

Year	No. of Closed Cars
1908	1823
1909	1823

Year	No. of Closed Cars
1910	1841
1911	1841
1912	1841
1913	1943
1914	1943
1915	1943

It appears, therefore, that the percentage of increase in traffic has been far greater than the percentage of increase in cars necessary to transport the traffic, and, unless the facilities afforded for the traffic transported during the year 1908 were in excess of the requirements, the additions made to the accommodations have not kept pace with the requirements of increased traffic. It is an historical fact that the accommodations on the surface railroad lines in Brooklyn, during the year 1908, were not in excess of the needs of the time, as the service on the surface as well as on other lines in Brooklyn was, during that period, the subject of repeated complaint and criticism.

It does not, however, follow that the number of cars should increase in exact proportion to the increase in the number of riding passengers. More frequent operation of cars might accommodate in part the traffic increase. Limiting points of operation where the maximum operation has been reached may prevent an increase in the number of cars, although the situation may be remediable through the substitution of cars of greater capacity.

There are three principal elements to be considered in reaching a determination as to whether adequate service is being rendered, and, if not, what improvement should be made. The first is the sufficiency of the number of cars to provide comfortable accommodation for the passenger traffic actually transported or offered for transportation, including the further element of capacity of the cars. The other elements are the frequency of operation and limitations imposed by maximum points of loading and traffic movement.

Wear and tear of equipment is an unavoidable incident of street railroad operation, as it is of all other utility service, necessitating temporary retirement of cars from service while repairs are effected. Similarly, liability to occasional failure of car mechanism during the strain of operation to which equipment is subjected, especially

in the rush hour periods, necessitating prompt substitution of cars, must also be taken into account. A large system cannot be operated with such nicety that an emergency may not arise requiring the use of equipment for the purpose of replacing other equipment accidentally rendered unserviceable. No matter how well maintained equipment may be, in a large system like that under consideration the retirement of cars for repairs must be regular, but in an efficient system the percentage will be almost constant. This feature of railroad operation necessitates that actual passenger requirements shall include provision for a margin of equipment to allow for such inspection and repair. According to the testimony in this Case, the companies now operate during the rush hour period 95.2 per cent of their total number of cars leaving a balance of 4.8 per cent only for repairs and reserve. This reserve the Commission considers insufficient and is considered by the companies as a very narrow margin. The incidents and exigencies of operation must be taken into account in rendering reasonable and adequate service. The Commission is of the opinion that eight per cent. of the total number of cars used is a safe margin to be kept in reserve for repairs and emergencies. Upon the basis of 1943 cars now operated, the companies should provide 62 additional cars of 37 passenger capacity or 39 cars of 58 passenger capacity to allow such 8% reserve. If the total number of cars to be operated be increased, the reserve would correspondingly increase. However, the Commission finds that at least thirty additional cars of fifty-eight passenger capacity should be provided for the purposes of reserve.

The companies contemplate the opening of several new surface lines, which the companies' Superintendent of Transportation estimated will require additional cars as follows:

Eighth Avenue Line	8 cars
West End Line	10 cars
Metropolitan Avenue Extension	4 cars
Ridgewood-Fresh Pond Road Extension...	20 cars
<hr/>	
Total.....	42 cars

The deficiency in the reserve and the existing overloading on lines indicate that the companies are not prepared to meet the service needs on the new or additional lines. The duty of a street railroad to provide adequate service is not discharged by furnishing

sufficient means for accommodating the traffic actually transported by it, but the street railroad must be prepared to meet the reasonable requirements resulting from the development or growth of the community which it serves. In a metropolis in which the companies have been operating for many years and which has grown so rapidly in population and in transportation needs as has the Borough of Brooklyn, a lack of provision for the needs of the immediate future can not but result in failure of discharging the positive duty of the street railroad carriers to render adequate service as of the time when the service requirements exist. Even if conditions be fluctuating, reasonable provision should be made for the maximum demand rather than for the minimum demand.

The companies now operate 1389 cars with a seating capacity of from 24 to 38 passengers each, as against 101 cars of a capacity of 58 passengers each. Of the total number, 90 have a seating capacity of 24 to 26 passengers each. Counsel for the companies asserts that aside from the economy in operating the small cars, their operation during the non-rush hours would have the advantage of affording more frequent service. The Commission finds that the type of cars with a seating capacity of only 24 to 26 passengers each has become obsolete for operation on the street railroads in the Borough of Brooklyn, having regard for the amount of passenger traffic and the density of population in the areas which they serve. This type of car is unsuited to the needs of the patrons of the companies in that portion of the greatest metropolis in the country which alone has a population of over 1,800,000. Overloading and congestion on this type of cars is most frequent, and during the winter period when the heating and ventilating of the cars are difficult, crowding on these cars is an hygienic menace to the passengers. These cars are inadequate for the traffic and population which they are to serve and should be retired from service. The Commission also seriously questions the class of 511 cars of seating capacity of 30 each as not now adequate for Brooklyn conditions and therefore indicates that progress should be made in the gradual replacement of these, although the Commission does not ask that all of this class be now replaced.

Observations made by the Transit Bureau of the Commission on the principal lines operated by the companies during rush hour periods show excessive loading in the rush hours, in some cases of more than 100 per cent during an interval of an hour. The cor-

rectness of the counts taken by the Transit Bureau of the Commission was not questioned by the companies, but was confirmed by the testimony of the companies' Superintendent of Transportation. The latter testified that the schedules for the evening rush hours were based on an average overload of from 50 to 60 per cent and even more.

In the course of the hearing a comparison was suggested between the obligation of an electric light or other utility to render adequate and complete service at the peak load or maximum demand and that of a street railroad to render adequate service at peak load periods, since both are given special rights and privileges and both undertake adequately to serve the public. Counsel for the companies makes this response: "We said then and we repeat now that the railroad companies cannot do so because they are not allowed a proper return for that kind of service." This implies the proposition that adequate service by a carrier is predicated upon a proper return. It reverses the existing law, which is that a fair return is predicated upon adequate service. (Public Service Com. v. Puget Sound T. L. & P. Co.—Wash.—P. U. R. 1915 B, 799, 807; Re Metropolitan Coach Co.—D. C.—P. U. R. 1915 D. 740.) In the former case, the Washington Public Service Commission said:

"To further adequate and sufficient service facilities to enable it to properly, expeditiously, safely, and properly transport passengers is the primary duty of the respondent. This duty is not dependent on the ability of the company to earn a return on its investment. It is the performance of this duty which entitles the respondent to a return on its investment.

"The service for which the company is entitled to receive compensation in the form of a return on its investment is the service defined by law, that is adequate and sufficient.

"The law does not authorize the respondent to demand a return on its investment for providing a service which is 50 per cent adequate and sufficient, or anything less than 100 per cent adequate and sufficient.

"The measure of compensation to which respondent may be entitled is not graduated according to the degree of proficiency with which it discharges its duty.

"The law does not authorize respondent to demand one-half of a reasonable return on its investment for furnishing a service which is 50 per cent adequate and sufficient. Hence a proceeding such as this, to require respondent to provide adequate and sufficient service facilities, is not a proceeding

affecting rates. It is not incumbent upon the Commission to make a valuation of respondent's property before requiring the respondent to furnish adequate and sufficient service facilities. Respondent may not defend against such requirement by showing that the particular service demanded is not profitable, and in this case it is no defense for the company to show that a particular line of its system is or is not profitable.

"1 Wyman, Pub. Service Corp. §809; *Platt v. LeCocq*, 150 Fed. 391; *New York v. Dry Dock, E. B. & B. R. R. Co.* 133 N. Y. 104, 28 Am. St. Rep. 609, 30 N. E. 563; *Atlantic Coast Line R. R. Co. v. North Carolina Corp. Commission*, 206 U. S. 1, 51 L. ed. 933, 27 Sup. Ct. Rep. 585, 11 Ann. Cas. 398; *Washington, P. & C. R. Co. v. Magruder*, 198 Fed. 218."

The duty to serve adequately is positive and the street railroad companies are not remediless when their return does not properly compensate for the service.

The companies contend, moreover, that it is a proper and reasonable standard of service to operate surface cars during rush hour periods with a standing load of from sixty to one hundred per cent. Excess loading can generally be prevented during non-rush hours but, if it cannot be avoided during rush hours, it should be minimized. The fact that a public utility persists for a long period in its failure to remedy conditions of inadequate or improper service creates no prescriptive right to continue them. Especially is this so where, as in this case, the number of standees frequently exceeds the standard assumed by the carrier. The matter of standing passengers in cars cannot be regulated by arbitrary percentages. Involved in it also is the vital duty of safeguarding the health of passengers against the deleterious effects of overcrowding. The percentage claimed by the companies is not recognized by regulating Commissions as proper. (In *Re Georgia R. & P. Co.*—Ga.—P. U. R. 1915 A, 901; *West End Bus. Men's Asso. v. United R. Co.*—Mo.—P. U. R. 1915 D 482, 494; *Cook Co. Real Estate Bd. v. Chicago Surface Lines*—Ill.—P. U. R. 1915 F 578.)

It is obvious that street car service in this City cannot be regulated by so-called health ordinances. These directly limit the number of passengers which may be accommodated aboard a car, and do not provide facilities for the passengers who are left off the cars. While a limited number are thus given better accommodations, the rest are denied accommodations altogether or are compelled to wait

an unreasonable length of time. Such ordinances regulate the public, and not the street railroads. The traveling public must be transported to and from their homes and places of business. What is needed is not that the public shall be prevented from being transported, but that the street railroads should provide additional facilities so that all may be transported with a fair degree of comfort and with rapidity.

In discussing a "standard" of standing passengers during rush hours, sight is lost of the question of heating and ventilating street cars during the winter or inclement season. To say that a number of passengers may be admitted into a car, whether seated or standing, without relation to the methods of heating and ventilating the cars, is to ignore the hygienic welfare of the passengers. This has been a difficult problem to which the Commission has given a great deal of investigation and labor. Unfortunately, the solution of this health question has not had the attention of health authorities which it deserves.

The companies insist that even if additional cars were acquired the rush hour service could not be increased, since the street traffic congestion and track layout in the vicinity of Fulton Street and Borough Hall and also upon the Williamsburgh Bridge preclude any increase.

While the places in question do limit the number of cars which may be operated through them, the evidence does not convince us that the point of saturation has been reached with the present number of cars. Not only is it feasible to operate more cars in various places where they are needed, but an increase in car capacity is also essential. But 101 of the 1943 cars now operated on the system contain a seating capacity of 58 passengers each. By replacing a number of smaller cars now operated over the limiting points with cars of larger capacity, a substantial improvement would be effected. The new type of large cars used by the companies could be operated with greater despatch over the limiting points than the older type. Some of the displaced cars could be operated on other heavy lines on which there are no physical limitations as to the number of cars operated, and could perhaps be reconstructed so as to give greater capacity, and the accommodations in service could thereby be increased upon the entire system.

The inadequacy of the present service is not seriously denied by the operating companies. But counsel for the companies con-

tends that the areas of physical limitation will be relieved by the release of cars from some of the lines as a result of new rapid transit operation, enabling the operation of more cars on lines which need additional service where track limitations now prevent, and that the operation of the rapid transit lines will result in the diminution of passenger traffic on the surface lines to such an extent as to result in the desired relief.

The companies no doubt still contemplate the continued maintenance of the percentage of overload which they have adopted as a standard for operation. The opening up of new means of travel which will be furnished by the rapid transit lines under consideration will, undoubtedly, change tides of travel and will vary the volume of travel on particular lines and sections. The new rapid transit lines were planned with a purpose of providing facilities for the increasing requirements. The record does not justify the expectation that such a decrease in traffic on the surface lines will occur as will eliminate overcrowding on the surface car lines. The rapid transit lines will quickly develop various parts of Brooklyn, and there will arise on the part of the augmented population a demand for transit service which will absorb all the equipment which may be released in the shifting of tides of travel.

The Superintendent of Transportation of the companies himself testified that about six or eight months previously he had made recommendations to the president and directors of the companies for the purchase of 100 additional cars, thus admitting that the responsible operating officials of the companies themselves realized the need for them. As he did not expect to obtain the cars in time for service during the winter of 1916-1917, and as they could not, therefore, be put into service before the winter of 1917-1918, his judgment seemed to be uninfluenced by the anticipated effect of the commencement of operation of the new rapid transit lines.

The provision which the Commission now orders the companies to make in additional cars may not eliminate standing passengers during rush hours, but the excess loading during those hours will be reduced and may be obviated where it is possible to do so. A smaller number of the new type cars may be required for replacing the obsolete cars than the number of cars to be retired. Upon these assumptions, the additional cars which the companies should now provide may be fixed at a minimum of 250 in number.

The new cars should be of the centre entrance type similar to

those in use on the surface lines, having a seating capacity of 58 each. Although longer than the old type cars, they will facilitate operation over limiting points on the road. Experience in their operation has shown that they tend greatly to decrease the number of accidents to boarding and alighting passengers which are frequent in the operation of the other types of cars, resulting in great economy of operation. The Superintendent of Transportation of the companies himself favored the centre entrance type of car, and testified that from the standpoint of safety of passengers they are the best.

The total number of cars to be acquired should be apportioned among the companies in proportion to the number of additional cars required for the purpose of providing seats for passengers.

It is recommended that an Order be entered accordingly requiring the purchase by the companies parties to this proceeding of a total of 250 additional surface cars and to place them in service as rapidly as possible during the season of 1917-1918, but not later than February 1, 1918.

(STRAUS, *Chairman*, HODGE and HERVEY, *Commissioners*, concurring; HAYWARD, *Commissioner*, absent.)

In the Matter of the Complaint of ALBERT MORITZ and others
against THE EDISON ELECTRIC ILLUMINATING COMPANY OF
BROOKLYN

CASE No. 1540

Rates—Electrical Corporations—Maximum Demand Rates—Method of Determining Maximum Demand.—Upon a rehearing in the case herein the respondent contended among other things that the change ordered by the Commission in computing the maximum demand from an assumed rating of 50 per cent of the connected load in the case of residences and 70 per cent in the case of other premises to 25 per cent and 50 per cent respectively, would render uncertain the final effects of the reduction in rates from 11 cents to 8 cents per kw. hour; also that the existing practice was satisfactory to the consumers, and that upon the payment of one dollar a customer could have his maximum demand ascertained by meter. HELD—that while the determination of the maximum demand on the basis of the existing percentages of the connected load was unsatisfactory, and the cost of ascertaining demand by meter was prohibitive, in order to avoid delay in putting the new rates into effect it would be expedient to continue the existing system and to adjust new rates thereto.

Rates—Electrical Corporations—Reduction of Rates—Modification of Former Order.—The Order entered herein on October 27, 1916, will be modified in certain respects in order to avoid litigation and delay in putting the rate reductions into effect.

Rehearings closed December 22, 1916. Supplemental Opinion adopted December 27, 1916.

On October 27, 1916, the Commission adopted an Opinion of Commissioner Hayward, and entered an Order pursuant thereto in Case No. 1540, directing The Edison Electric Illuminating Company of Brooklyn to reduce the maximum rate for electricity from 11 cents to 8 cents per kilowatt hour, with lesser reductions in other rates, to change the method of computing the maximum demand rating, to substitute tungsten lamps for gem lamps and to discontinue the practice of allowing discounts under the maximum demand power rate. (See 7 P. S. C. R. [1st Dist. N. Y.] 175.)

By petition dated November 27, 1916, the Company asked for a rehearing which was granted by Order entered by the Commission on December 22, 1916, setting the hearing for the same day. Immediately after the rehearing on that day the Commission entered an Order modifying the previous Order as set out below.

On December 27, 1916, Commissioner Hayward filed a supplemental Opinion in support of the modifying Order. Upon a motion to adopt the supplemental Opinion Chairman Straus, Commissioners Hayward, Hodge and Whitney voted for, and Commissioner Hervey against, adoption. In voting the following statements were made:

COMMISSIONER HERVEY: What was the effect of the change in the matter of the reduction of rates as fixed by the Order in Case No. 1540 adopted December 22, 1916?

COMMISSIONER HAYWARD: The saving was reduced from \$1,000,000 to \$700,000. We did not recede any from our position as to the appraisal.

COMMISSIONER HERVEY: As a matter of principle, I would not approve of the reduction. The Opinion cannot be right from my point of view. I stated to the Chairman at the time the Commission was in conference with the Edison Company, that the Order having been issued by the Commission it should not enter into any compromise in respect to that Order. We should let it go through to a finish, even if the company served a writ of certiorari to review the Order. There should be no compromise after the Order

was adopted. That is my point of view of the matter. I would not consider the merits of the case as to this Opinion, or any other consideration, except as to the matter of principle, that is, not to compromise on an Order of the Commission. We are authorized to do this thing under a certain procedure and we should carry out that procedure. There is an implication that either the Order was improper and incorrect when first adopted, or else that other considerations had entered in, in case the Order is modified or a compromise is accepted.

COMMISSIONER HODGE: My idea is, we will save more money for the taxpayers by making this compromise than we would if the company commenced certiorari proceedings to review the Order, which would probably mean three years in the Courts and three years at \$700,000 a year would amount to \$2,100,000.

COMMISSIONER WHITNEY: The original Order required the company to file a schedule, to be approved by the Commission, and that necessarily presupposed that there need be conferences on the matter of that schedule before it could be filed and approved by the Commission, and that was done and the Commission did then, by subsequent action, approve a schedule of rates, which makes it possible for the company to accept the schedule effective by January 1, 1917.

The Order entered on December 22, 1916, and the Supplemental Opinion adopted on December 27, 1916, are as follows:

An order having been made in this case on October 27, 1916 and the Edison Electric Illuminating Company of Brooklyn having presented its petition verified November 27, 1916 praying that a rehearing be had in respect to said order and said petition having been granted and said rehearing having been had, it is

ORDERED that said order of October 27, 1916 be and the same hereby is abrogated; and it is

I. FURTHER ORDERED that on and after January 1, 1917 and for a period of twelve months thereafter the maximum price to be charged by said Edison Electric Illuminating Company of Brooklyn for electric service, exclusive of the installation and renewals of electric lamps, shall be eight cents per kilowatt hour.

II. The Commission being of opinion that the rates or charges of said company are unjust, unreasonable, unjustly discriminatory and unduly preferential, it is

FURTHER ORDERED that on and after January 1, 1917 and for a period of twelve months thereafter the general lighting rates or charges shall be as follows:

1. Eight cents for the first two hours' average daily use of the maximum demand; six cents for the second two hours' average daily use of the maximum demand; and five cents for the excess over four hours' average daily use of the maximum demand. Said maximum demand, except when determined by meter, shall be assumed to be

not in excess of fifty per cent of the consumer's connected load in the case of residence consumers, and not in excess of seventy per cent of the connected load for other consumers, provided, however, that said maximum demand shall not in any case be assumed to be less than one and one-half kilowatts.

2. Said company shall not furnish to its customers gem lamps or other lamps of an efficiency of less than one and one-quarter watts per candle power and the charge for such lamps shall be based on the cost to the company. The maximum price to be charged for the installation and renewal of incandescent lamps furnished by said company in connection with the supply of current for lighting under any lamp service agreement shall be one-half of one cent per kilowatt hour. If tungsten lamps of smaller capacity than fifty watts are furnished by said company under such lamp service agreement it shall be entitled to make an extra charge therefor but not more than the additional cost of the installation and renewal of such smaller lamps.

III. FURTHER ORDERED that on and after January 1, 1917 and for a period of twelve months thereafter the rates or charges for current used for power under the maximum demand contract shall be as follows: eight cents per kilowatt hour for the first hour's average daily use of the maximum demand; five cents per kilowatt hour for the second hour's average daily use of the maximum demand; and three cents per kilowatt hour for all current in excess of two hours' average daily use of the maximum demand. Said maximum demand, except when determined by meter shall be assumed to be not in excess of eighty per cent of the connected load. No discount shall be allowed by said company under said contract.

IV. FURTHER ORDERED that before January 1, 1917 said company shall issue, file and post a schedule or supplement to carry into effect the provisions of this order, said schedule or supplement to become effective January 1, 1917.

V. FURTHER ORDERED that on or before July 1, 1917 said company shall submit for the approval of the Commission a complete tariff schedule for all electrical service effective July 1, 1917, which schedule shall be in accordance with the provisions of this order and the decision in this case.

VI. FURTHER ORDERED that this order shall take effect forthwith and shall continue in force until changed or abrogated.

VII. FURTHER ORDERED that on or before December 27, 1916 at noon said company shall notify the Commission whether this order is accepted and will be obeyed.

Henry H. Whitman, Adna F. Weber and Harry G. Freidman, for the Commission.

W. F. Wells and Paul R. Atkinson, for The Edison Electric Illuminating Co. of Brooklyn.

Commander Albert Moritz, the complainant, in person.

HAYWARD, *Commissioner:* On November 27, 1916, the Edison Electric Illuminating Company of Brooklyn filed a petition praying for a rehearing in the proceedings which had terminated in the order of the Commission dated October 27, reducing the rates for electricity in Brooklyn. This petition was granted and a rehearing

was duly held on December 22, 1916. The petition raised a number of objections to the findings of the Commission and the details of the rate schedules prescribed. The officers of the company further asked that consideration be given to developments since the record was closed which gravely affected the company's business such as the great increase in the cost of coal and the general rise in the price of all materials and supplies, the increase in the rates of wages accompanied by a reduction in hours of labor, greatly increased tax assessments, the reduction in the rates for city lighting, and the uncertainties introduced in the situation by business stimulated by the war, the continuance of which could not be counted on.

It is urged that the company is under the necessity of making extensive capital expenditures in order to provide adequate service, and to invest large sums which will not bring immediately to the company a fair return on the outlay. The officers of the company expressed the apprehension that it would prove difficult in view of the valuation found and the drastic reductions in the rates ordered, to enlist capital for necessary additions. Investors giving attention only to the figure of the final valuation of \$22,000,000 would not appreciate the fact that according to the Commission's own determination the property of the company represented outlays of approximately \$30,000,000 and that though \$7,000,000 was deducted for depreciation on account of lack of newness, property to this amount was still in existence and in the service of the consumer.

With reference to the schedules ordered, it was urged that these should conform more closely to the present practices of the company, with which its customers were familiar. The company's representatives stated that certain features of the present schedule, with reference to the rating of installations, while perhaps discriminatory in form, were not discriminatory in purpose, and did not impose an unjust burden on the small consumers, if account is taken of the relative larger cost per kw. hr. involved in serving the smaller consumer. Any change in the fundamental features of the schedule introduces uncertainty in the calculations as to the effect of the new rates, and would seriously interfere, if not render it impossible, to put reduced rates into effect without considerable delay.

The company placed itself on record as willing to discontinue the general practice of issuing Gem lamps to consumers and to substitute the 50-watt Mazda lamp as the standard and to charge

for lamps on the basis of cost, either in a fixed price per lamp, or in a kilowatt-hour charge in connection with the service.

In regard to the power schedule, the company's officers expressed their willingness to abolish the discounts as required by the Commission, but proposed that in view of the low average rate now charged for current for power purposes, the rates for the primary and secondary steps be applied to one hour's daily use of the maximum demand, or 30 hours per month, instead of 25 as at present. In order to obviate criticism, they further suggested that, except where determined by meter, the maximum demand should be assumed to be not more than 80 per cent of the connected load for all installations under ten horse power in place of the present schedule of 85 per cent, where one motor is used and 75 per cent where more than one motor is used. It is the intention of the company as soon as practicable to install maximum demand meters on large power installations.

With reference to the wholesale contracts, the company submits that in view of the importance of these contracts and the large amount of revenue involved under each one of them, it is impossible to make a revision of these rates in accordance with the Commission's recommendations in thirty days, and that six months should be allowed for a thoroughgoing study and the formulation of schedules to be presented for the Commission's approval.

The company's representatives expressed their desire to avoid costly and protracted litigation and their willingness to make substantial reductions in the rates and prayed the Commission so to modify the order as to enable the company to put it into effect on January first, and thus to give to the public at once the benefits of reduced rates.

The Commission in conference with the company's officers and in the formal proceedings has given due consideration to the contentions of the company and its officers. The Commission appreciates the necessity of inducing the further investment of capital in order to provide for adequate service. It does not believe, however, that there are any grounds for apprehension on the part of investors that further legitimate investment of capital will not be permitted to earn a fair return.

The representatives of the company urge that the present form of its lighting rate schedules should be retained because its customers are now familiar with it, and that a radical departure from

it would add materially to the cost of inspection of consumers' installations in the case of the great army of small customers, and would make it impractical to put into effect new rates without delay. The present practice of rating all installations at a minimum demand of $1\frac{1}{2}$ kilowatts has the effect of applying the maximum rate to customers using 90 kw. hrs. or less. This it contends is not unfair. Certain consumer costs are approximately the same for all customers, regardless of the amount of current used. Such expenses, sometimes spoken of as "consumer costs", form, however, relatively a greater part of the cost of serving comparatively small customers than of larger consumers, and therefore justify a higher rate per kw. hr. for smaller consumers, a result which is indirectly brought about by the present practice of the company.

The company further submits that the adoption of a new percentage rating for demand renders uncertain the final effects of any rates ordered. It holds that the present practice is satisfactory to its customers, and that any one aggrieved may on payment of one dollar per month have the maximum demand ascertained by meter.

The Commission does not believe the present system of computing maximum demand on the basis of percentages of connected load to be satisfactory. The cost of ascertaining demand by meter is, however, prohibitive in the case of the great mass of consumers. In order to avoid delay in putting the new rates into effect, it would seem expedient to continue its present system, and to adjust new rates thereto.

In view of all the considerations raised in these proceedings, and in the application for rehearing, and the desirability of avoiding long and costly litigation and delay, I believe that the order adopted October 27, 1916, should be modified, and the following schedules put into effect, January 1, 1917, viz.:

For lighting—

- 8c. for the first two hours' average daily use of the maximum demand.
- 6c. for the second two hours' average daily use of the maximum demand.
- 5c. for the excess over four hours' average daily use of the maximum demand.

The maximum demand to be determined as at present.

For power—

- 8c. for the first hour's average daily use of the maximum demand.
- 5c. for the second hour's average daily use of the maximum demand.
- 3c. for the excess over 2 hours' average daily use of the maximum demand.

The maximum demand to be assumed to be not more than 80 per cent of the connected load.

(STRAUS, *Chairman*, HODGE and WHITNEY, *Commissioners*, concurring; HERVEY, *Commissioner*, dissenting.)

In the Matter of the Hearing on the complaint of REALTY SUPERVISION COMPANY against THE EDISON ELECTRIC ILLUMINATING COMPANY OF BROOKLYN as to alleged refusal to extend conjunctional service contract to lessee of building.

CASE No. 2156

Discrimination and Preferences—Electrical Corporations—Conjunctional Service Discriminatory—Refusal by the respondent to supply conjunctional service under a contract rider which would permit the pooling of the consumption of current by all the tenants of two or more adjoining buildings for the purpose of giving the lessee or owner of said buildings the benefit of a wholesale rate and the cancellation of said service rider are not improper, as the retention of such a rider and the rendition of service thereunder are contrary to the principle of "one customer, one service, one meter", and discriminate against the small consumers who cannot pool their consumption as well as against the large consumers who have but one building, one service connection and one meter.

Powers of Commission—Reparation—Electrical Corporations—Commission Not Possessed of Power to Award Damages.—Even if the complaint as of a date prior to the cancellation of the conjunctional service rider were justified the Commission is not possessed of power to award damages.

Hearings closed November 17, 1916. Opinion adopted December 27, 1916.

This proceeding was upon the complaint of the Realty Supervision Company and was started by the adoption of a Resolution on November 1, 1916, directing a hearing in the matter.

On December 27, 1916, the Commission adopted an Opinion of

Commissioner Hayward, who presided at the hearings, and entered an Order pursuant thereto dismissing the complaint.

Edward J. Crummey, for the Commission.

A. J. Levey, for the Realty Supervision Co.

M. S. Seelman and *C. E. Butz*, for The Edison Electric Illuminating Co. of Brooklyn.

HAYWARD, *Commissioner*: On October 20th, the Realty Supervision Company complained to this Commission that its principal, Fulton & Elm Leasing Company, had been refused service by the Edison Electric Illuminating Company of Brooklyn under the so-called Conjunctional Service Rider in the schedules of that company. This rider, which is no longer included in the Company's schedules, read originally as follows:

"It is further understood and agreed that in view of the fact that the buildings enumerated in this contract are not more than 100 feet apart, and under a common leasehold (or) ownership and may be served from one service, the current required for them may be taken collectively in determining the rate to which the undersigned is entitled under this contract."

The Fulton & Elm Leasing Company is and has been the lessee of property 474 to 482 Fulton Street, Brooklyn. This is a series of adjoining buildings which are separated by party walls in the front but have a common open space in the rear. They are handled as one building by the lessee which rents the stores on the street to various tenants.

On August 16th, the Realty Supervision Company, acting as agent for the Fulton & Elm Leasing Company and with the written consents of the tenants of the stores applied to the Brooklyn Edison Company for service under the above rider to the end that the consumption of all of these tenants might be pooled and a wholesale rate obtained instead of the rate in force when each tenant's consumption was billed separately.

The Edison Company refused to make the change and on August 25th filed a new schedule which eliminated the word "leasehold" from the rider, said new schedule becoming effective on September 25. Hearings on the complaint were held before me on November 16 and 17 when it was urged by the complainant that it was unjust to discriminate as between leaseholders and owners and that the

rider in question did originally and should continue to apply to the circumstances of this case. The Company contended that this rider had never been intended to cover the situation here involved, and on November 20, filed a new schedule cancelling entirely the rider in question.

By this action of the Company the questions raised by complainant at the hearing are subordinated to the question of the propriety of the rider itself and whether the Commission should insist upon its retention.

There can be no doubt that this conjunctional service rider in any form is contrary to the principle of "one customer, one service, one meter", which has been insisted upon by this Commission as the only principle which will give justice to all.

In regard to the same rider which was contained in the schedule of the New York Edison Company, I said in my dissenting opinion, (6 P. S. C. R. 1st Dept. 289 at P. 306)—"I believe it to be highly discriminatory—both against the larger consumer who takes the same amount of current with very much less service, and the small consumer who cannot join with his neighbors to get a lower rate.—It is plain that the person who owns numerous buildings, each with its service connection and its one or more meters gets a great deal by way of service and facilities that another customer, consuming a like amount of current, but all in one building and with one service, does not get.

"Moreover, this conjunctional service contract is discriminatory as against the owner or lessee of a small building which cannot be joined under such a provision. He is forced to compete with his neighbor in the same type and size of a building and is penalized in his electric light or power bill because he or his landlord does not own any other buildings in the same block and within 100 feet. If there were some appreciable difference in the cost of the service to the fortunate owner or lessee of several buildings which would come within this rider, or if the service to such owner or lessee could be rendered with appreciable economy to the companies, it would perhaps be proper that the owner of the single building should be charged more than the owner of three or four, but where the owner of several buildings receives for each building the same service as the owner of a single building, it is certainly discriminatory to allow the consumption in such buildings to be joined and the price of current reduced thereby."

On the same grounds, I believe that the Brooklyn Company has done well to cancel this rider and that it should on no account be reinstated.

This being the case the questions which were raised at the hearing become academic in so far as this Commission is concerned. Even if the situation involved was one which in August entitled complainant to service under this rider—which I seriously doubt—we would be without authority to award him damages (*Murphy vs. New York Central* 170 App. Div. 788).

I believe, therefore, that the complaint should be dismissed.

(*STRAUS, Chairman, HODGE, WHITNEY and HERVEY, Commissioners, concurring.*)

In the Matter of the Complaint against THE LONG ISLAND RAILROAD COMPANY's Service to and from New York and Westbridge.

COMPLAINT No. 14176

Service—Railroad Corporations—Service at Westbridge, Queens—Adjustment of Complaint.—The complaint by the Westbridge Civic League of lack of service at Westbridge by The L. I. R. R. Co. and the request that all trains to and from Manhattan stopping at Forest Hills, Kew Gardens and Jamaica should also stop at Westbridge, having been adjusted by adding one daily train service in each direction, which is adequate for the traffic at Westbridge, the complaint will be deemed satisfied.

Memorandum adopted December 27, 1916.

On December 27, 1916, the Commission approved a Memorandum of Commissioner Hodge and, pursuant thereto, a communication of the same date to be forwarded to The Long Island Railroad Company, closing the complaint made by the Westbridge Civic League on October 17, 1916, against insufficient train service at Westbridge. No hearings were required, the matter having been adjusted by correspondence.

HODGE, Commissioner: The correspondence relative to this complaint was referred to me by the Commission at its meeting on November 29th.

From the correspondence it would appear that there is not sufficient traffic at this station to warrant the Long Island Railroad

Company complying with the request made by the Westbridge Civic League that every train to and from New York that stops at Forest Hills, Kew Gardens and Jamaica stop at Westbridge.

The report of the Chief of the Transit Bureau under date of November 6th indicates that the total number of passengers using this station during the morning rush hour are less than a dozen. About an equal number use the station during the evening rush hour.

Since, however, there may be some truth to the contention that were there better train service, passengers who now walk the long distance to Kew Gardens station would use the Westbridge station. I have taken the matter up informally with Mr. C. L. Addison of the Long Island Railroad Company.

From the letter of Mr. Addison under date of December 21st herewith attached it will be noted that the Long Island Railroad Company agree to stop at Westbridge train No. 1723 scheduled to leave Jamaica at 8:02 A. M. and scheduled to arrive at Pennsylvania station, New York City, at 8:20 A. M., and train No. 858 scheduled to leave Pennsylvania Station, New York City at 5:33 P. M., and scheduled to arrive at Jamaica at 5:53 P. M. This change in the schedule becomes effective Saturday, December 23rd, 1916.

I recommend that the attached letter dated December 22d be sent to the railroad company and that complaint 14176 be closed.

(STRAUS, *Chairman*, HAYWARD, WHITNEY and HERVEY, *Commissioners*, concurring.)

Memoranda of Cases Decided Without the Filing of Opinions

Between January 1, 1916 and December 31, 1916

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EDITORIAL NOTE AS TO MEMORANDA OF CASES

The following memoranda relate to the cases in which, from January 1, 1916, to and including December 31, 1916, decisions were rendered without the writing of formal Opinions. The memoranda accordingly include both the cases in which no Opinion was filed at any stage of the proceedings and the cases in which an Opinion was filed at some stage but Orders not set forth in connection with the Opinion were entered either before or after the time when the Opinion was filed. The memoranda contain only the salient points of the Orders and do not include Orders or Resolutions extending the time of corporations within which to comply with Orders of the Commission or Orders or Resolutions directing hearings; nor do they include such details as relate to the time of taking effect of an Order, the duration of an Order and requirements as to notifying the Commission whether the terms of an Order are accepted and will be obeyed. Oftentimes, in cases in which Opinions have been adopted or filed at some stage of the proceedings, prior or subsequent action is taken without the filing of Opinions. Therefore, for a complete "case record" of any case, both the indices of the Opinions and the indices of the Memoranda should be consulted.

The memoranda for the period from July 1, 1907, to December 31, 1912, are printed in Volume III, and for the years 1913, 1914 and 1915 in Volumes IV, V and VI respectively of this series of reports.

MEMORANDA OF CASES DECIDED WITHOUT THE
FILING OF OPINIONS

In the Matter of Certifying Types of Electric Current Energy
Meters (Watt-hour Meters)

CASE No. 1100: RESOLUTION ADOPTED JANUARY 6, 1916

METERS—ELECTRICAL CORPORATIONS—TYPE OF METER APPROVED.—The Resolution approved the following additional types of electric meters: Sangamo Electric Co., Type D-5 External Shunt; Two Wire Cuts No. 178 and 178-A, same as Type D-5, except for external shunt, which increases the capacity up to and including 800 amperes.

(For other types of meters previously approved by the Commission, see 6 P. S. C. R. [1st Dist. N. Y.] 417).

In the Matter of the Application of THE CITY OF NEW YORK relative to opening across the tracks of THE NEW YORK AND HARLEM RAILROAD COMPANY East 166th Street from Brook avenue to Park avenue, East, in the Borough of The Bronx, City of New York.

CASE No. 1405: RESOLUTION ADOPTED JANUARY 6, 1916. ORDER
ENTERED APRIL 17, 1916

GRADE CROSSINGS—EXTENSION OF STREET ACROSS RAILROAD—CERTIFICATE OF PERFORMANCE OF WORK—APPORTIONMENT OF COST.—The Resolution authorized the Chairman and the Secretary of the Commission to execute and file with the Comptroller of the City of New York a certificate of performance of work by the New York Central Railroad Company of the extension of East 166th Street across the New York and Harlem Railroad on an overhead bridge for pedestrians only, as authorized by an order entered by the Commission on December 1, 1911, (See 3 P. S. C. R. [1st Dist. N. Y.] 706), setting forth that the total cost of said work was \$7,354.17, and directing the payment by the City of New York of its share of the cost, including interest, of the sum of \$3,370.29. The order entered April 17, 1916, pursuant to a rehearing granted upon the application of the City of New York, confirmed the determination of the Commission as set forth in the Resolution of January 6, 1916.

Hearings closed April 17, 1916.

H. M. Chamberlain, for the Commission.

George H. Walker, for the New York, New Haven and Hartford R. R. Co.

Lamar Hardy, by *William J. Clarke*, for the City of New York.

In the Matter of Certifying an Attachment to Types of Electric Current Energy Meters, and a Standard Form of Report on Inspecting the Same.

CASE No. 1451: RESOLUTIONS AND ORDERS ADOPTED JANUARY 6, JANUARY 20, MARCH 9, APRIL 6 AND NOVEMBER 22, 1916

METERS—ELECTRICAL CORPORATIONS—TYPE OF ATTACHMENT TO METER APPROVED.—The Resolution of January 6, 1916, approved the permanent use of the following types of attachment to electrical meters: Type SC-25, Type SC-26, and Printometer Type SC-25. The Resolution of January 20, 1916, approved also the following attachments to meters: Fort Wayne Electric Works, Demand Indicator, Type M-2, Form B. A., Cuts Nos. 560 and 560a, and Meter Contact, Type D-2, Cut No. 561; Demand Indicator, Type M-2, Form AA, Cuts Nos. 562 and 562a, and Meter Contact, Type D-2, Cut No. 561. An Order of the same day disapproved the further use of the Maxicator Type G-2, Contactor Clock Type M, Maxicator Type G, and Contactor Type M. A Resolution of the same day approved certain types of electrical switches, as follows: Minerallac Electric Company's Electrically Operated Switch, Type P. S., Cuts Nos. 1007 and 1007A; Fort Wayne Electric Works, Demand Indicator Relay Switch, Type R, Form A. B., Cuts Nos. 1008 and 1008A; Demand indicator relay switch same as electrically operated switch, Type P. S., except as to name plate. The Resolution of March 9, 1916, approved the following: Fort Wayne Electric Works, Demand Indicator Contactor, Type C-2, Form BC, Cuts Nos. 1022 and 1022-a. A Resolution of April 6, 1916, authorized the United Electric Light and Power Company to continue until April 1, 1917, the use of Type O. A. single phase or polyphase watt hour meter and a demand device known as R. O. demand meter, which were to expire on April 1, 1916, under a Resolution adopted September 24, 1915. A Resolution of November 22, 1916, approved the use of the following: Fort Wayne Electric Works, Demand Indicator Contactor, Type O-2, Form BC, Cuts Nos. 1022 and 1022-a. Another Resolution of the same day approved the following devices of the General Electric Company: Meter Contact, Type D-3, Cuts Nos. 1020-1020A; Meter Contact, Type D-3, Modified, Cuts Nos. 1020 B and 1012 C; Printometer, Type P, Cuts Nos. 1021-1021 A and 1021 B.

In the Matter of the Hearing on the Motion of the Commission Concerning the Acts, Regulations, Works and Property of the RICHMOND LIGHT AND RAILROAD COMPANY in respect to its Distribution System for Light, Heat or Power.

CASE No. 1895: RESOLUTION ADOPTED JANUARY 6, 1916

PLANT AND EQUIPMENT—ELECTRICAL CORPORATIONS—IMPROVEMENTS IN

DISTRIBUTION SYSTEM—PLANS APPROVED.—The Resolution approved the plans submitted by the Richmond Light and Railroad Company, as follows: (1) Map of Richmond Borough showing approximate location of present lines of Richmond Light and Railroad Company, West Brighton, New York, dated August 19, 1914, and numbered 4-D-89; and (2) Map showing route of transmission line Livingston and Concord, 6600 Volt Line Richmond Light and Railroad, New Brighton, S. I., New York, W. H. Rudisill, dated October 21, 1914, and numbered 3-A-26.

In the Matter of the Application of THE CITY OF NEW YORK for a determination as to the manner in which Exterior Street from East 151st street to East 158th street shall be opened, extended or constructed across the tracks of the SPUYTEN DUYVIL AND PORT MORRIS RAILROAD COMPANY, leased to and operated by THE NEW YORK CENTRAL AND HUDSON RIVER RAILROAD COMPANY.

CASE NO. 1475: RESOLUTION ADOPTED JANUARY 13, 1916

GRADE CROSSINGS—EXTENSION OF STREET ACROSS RAILROAD—CERTIFICATE OF PERFORMANCE OF WORK.—The Resolution authorized the Chairman and the Secretary of the Commission to execute and file with the Comptroller of the City of New York a Certificate of Performance of Work of the extension of Exterior Street from East 151st Street to East 158th Street in the City of New York, across the tracks of the Spuyten Duyvil and Port Morris Railroad, setting forth that the total cost of the work, exclusive of railroad betterment and including interest to October 1, 1915, was \$63,974.57, of which \$690.73 was expended by the Public Service Commission for the First District, in supervising said work, and that the balance due to The New York Central Railroad Company from the City of New York was equal to one-half of the entire cost less \$690.73, or \$31,096.55.

Hearings closed January 3, 1916.

H. M. Chamberlain, for the Commission.

Lamar Hardy, by *W. J. Clarke*, for the City of New York.

George H. Walker, for The New York Central Railroad Company.

In the Matter of the Hearing on the Complaint of WILLIAM H. BECKER against THE FLATBUSH GAS COMPANY as to the alleged refusal of said Company to set a prepayment meter.

CASE NO. 1945: ORDER ENTERED JANUARY 13, 1916

METERS—GAS CORPORATIONS—PREPAYMENT METER—COMPLAINT DISMISSED.

—The Order dismissed the Complaint herein, upon the installation by The Flatbush Gas Company of a prepayment meter in the premises of the complainant.

Hearings closed April 12, 1915.

Arthur DuBois, for the Commission.

Cullen & Dykman, by *Randolph Catlin*, for The Flatbush Gas Company.

In the Matter of the Hearing on Motion of the Commission as to whether the Rules, Regulations and Practices of THE CONEY ISLAND AND BROOKLYN RAILROAD COMPANY, CONEY ISLAND AND GRAVESEND RAILWAY COMPANY, BROOKLYN, QUEENS COUNTY AND SUBURBAN RAILROAD COMPANY, NASSAU ELECTRIC RAILROAD COMPANY and THE BROOKLYN HEIGHTS RAILROAD COMPANY in respect to the use by passengers of the running board of open cars of said companies are unsafe, improper and inadequate.

CASE NO. 2034: ORDER ENTERED JANUARY 13, 1916

RULES AND REGULATIONS—STREET RAILROAD CORPORATIONS—USE OF RUNNING BOARD BY PASSENGERS.—The Order approved the Rules and Regulations of The Coney Island and Brooklyn Railroad Company, Coney Island and Gravesend Railway Company, Brooklyn, Queens County and Suburban Railroad Company, Nassau Electric Railroad Company and The Brooklyn Heights Railroad Company, prohibiting passengers to ride on buffers and running boards, or to misuse the seats.

Hearings closed November 23, 1915.

E. J. Crummey, for the Commission.

D. A. Marsh, Wm. Siebert and S. W. Huff, for The Coney Island and Brooklyn Railroad Company, Coney Island and Gravesend Railway Company, Brooklyn, Queens County & Suburban Railroad Company, Nassau Electric Railroad Company and The Brooklyn Heights Railroad Company.

In the Matter of the Complaint of THOMAS J. SHINE and 128 others, against NEW YORK CITY INTERBOROUGH RAILWAY COMPANY, *re* operation of certain service on its Aqueduct Avenue Line, through and from Kingsbridge.

CASE NO. 176: ORDER ENTERED JANUARY 20, 1916

SERVICE—STREET RAILROAD CORPORATIONS—THROUGH OPERATION FROM KINGSBRIDGE ROAD TO 155TH STREET—PREVIOUS ORDER ABROGATED.—The

Order abrogated without prejudice an order entered herein on December 27, 1907, requiring the New York City Interborough Railway Company to run one line of cars over the Aqueduct Avenue Line and the Ogden Avenue Line through, without change, from Kingsbridge Road to 155th Street. The continuance of the Order of 1907 was no longer deemed necessary, because the requirements thereof were superseded by an order entered on March 3, 1908, in Case No. 798.

In the Matter of the Complaint of the WEST END BOARD OF TRADE, by D. B. Seaver, Second Vice President, against NEW YORK CONSOLIDATED RAILROAD COMPANY (formerly Brooklyn Union Elevated Railroad Company), THE BROOKLYN HEIGHTS RAILROAD COMPANY and NASSAU ELECTRIC RAILROAD COMPANY.

CASE No. 597: ORDER ENTERED JANUARY 20, 1916

SERVICE—ELEVATED RAILROADS—CARS OF FIFTH AVENUE ELEVATED LINE—PREVIOUS ORDER ABROGATED.—The Order entered abrogated a previous order entered herein on June 23, 1908, requiring the Brooklyn Union Elevated Railroad Company, now the New York Consolidated Railroad Company, to operate at least three cars in each train on the Fifth Avenue Line, between morning and evening rush hours, between 65th Street and Park Row. The continuance of that order was deemed unnecessary because the requirements contained therein were superseded by an order entered in Case No. 771, on January 22, 1909, which was amended February 19, 1909, and July 13, 1909.

(For the Order of June 23, 1908, and an Opinion adopted on the same day, see 1 P. S. C. R. [1st Dist. N. Y.] 222; and for the Orders entered in Case No. 771, see 1 P. S. C. R. [1st Dist. N. Y.] 454, and 3 id., 596).

Hearings closed June 5, 1908.

Grosvenor H. Backus, for the Commission.

D. B. Seaver, for the West End Board of Trade.

A. N. Dutton, for defendant railroad companies.

In the Matter of the Complaint of J. J. KELLY, *et al.*, against SEA BEACH RAILWAY COMPANY—"Failure of local trains to stop at Avenue 'S'."

CASE No. 1008: ORDER ENTERED JANUARY 20, 1916

SERVICE—ELEVATED RAILROADS—STATION STOP ON SEA BEACH LINE—PREVIOUS ORDER ABROGATED.—The Order abrogated a previous Order, entered February 16, 1909, requiring the Sea Beach Railway Company to establish a stop at Avenue S, between Avenue U and Kings Highway, said requirement

being no longer necessary, on account of the operation of a new station at said point in connection with the Fourth Avenue-Sea Beach Line.

In the Matter of the Hearing on the Motion of the Commission on the Question of Alterations and Changes in the following Grade Crossings with the Tracks of THE LONG ISLAND RAILROAD COMPANY—Farmers Avenue—at Hollis.

CASE NO. 1262: RESOLUTIONS ADOPTED JANUARY 20 AND 27, FEBRUARY 10, JUNE 5 AND 15, AND JULY 27, 1916

GRADE CROSSING ELIMINATION—DETERMINATION OF GRADE—PLANS AND ESTIMATES APPROVED.—The Resolutions adopted approved plans and estimates as follows: Drainage Plan, January 27, 1916; Plan of Subway at Hollis, February 10, 1916; Estimate of H. J. Mullen Contracting Company for excavation and installation of oiled macadam, June 15, 1916; Plan showing station layout and shelter, and approaches to station except as to the omission of a driveway leading from Minnetonka Avenue to the station, April 13, 1916; Plans showing station layout at Hollis, July 27, 1916. The Resolution of June 5, 1916, directed the New York and Queens Electric Light and Power Company to change its poles and wires so as to conform with the proposed grades at Farmers Avenue and the adjoining streets and to submit plans to the Commission for its approval.

(For a previous Order entered herein on February 6, 1914, see 5 P. S. C. R. [1st Dist. N. Y.] 369.)

Hearings closed December 27, 1916.

Arthur DuBois, for the Commission.

L. J. Carruthers, for The Long Island Railroad Co.

Lamar Hardy, by *Vincent Victory*, for the City of New York.

In the Matter of the Hearing on Motion of the Commission on the Question of Improvements in the Equipment and Service of THE NEW YORK AND NORTH SHORE TRACTION COMPANY and the SOUTH SHORE TRACTION COMPANY as regards Heating and Heating Regulations with Respect to all Closed Cars Carrying Passengers Operated by them in the City of New York.

CASE NO. 1289: ORDER ENTERED JANUARY 20, 1916

CARS OF STREET RAILWAY CORPORATIONS—HEATING OF CARS—PREVIOUS ORDER ABROGATED.—The Order abrogated an Order entered herein on Decem-

ber 2, 1910, requiring The New York and North Shore Traction Company and the South Shore Traction Company to comply with certain heating regulations, the enforcement of said Order being no longer deemed necessary because of the entry of an Order on April 26, 1912, in Case No. 1426, requiring all street railroad corporations to comply with certain heating regulations therein set forth.

(For the Order of April 26, 1912, in Case No. 1426 see 3 P. S. C. R. [1st Dist. N. Y.] 252.)

In the Matter of Rules and Regulations for the Inspection and Testing of Boilers of Steam Locomotives used within the First District.

CASE NO. 1301: ORDER ENTERED JANUARY 20, 1916

BOILER INSPECTIONS—RAILROAD CORPORATIONS—REPORT OF INSPECTIONS—PREVIOUS ORDER AMENDED.—The Order amended subdivision (c) of Rule XII of the Rules and Regulations prescribed by the Commission for testing boilers of steam locomotives, by an Order entered herein December 13, 1910, to read as follows:

(c) Certificate of Inspection: Once every three months at the time safety valves are set, a certificate of inspection shall be filed with the Public Service Commission, First District, for each locomotive boiler subject to the jurisdiction of said Commission. Such certificate of inspection may be a duplicate of the certificate required by the Interstate Commerce Commission on its Form No. 1, entitled "Monthly Locomotive Inspection and Repair Report".

There shall be filed annually with the Public Service Commission, First District, a certificate of inspection, which may be a duplicate of the certificate required by the Interstate Commerce Commission on its Form No. 3, entitled "Annual Locomotive Inspection and Repair Report." The certificates covering quarterly and annual inspections shall be filed within ten days after the inspection is made. A copy of each certificate shall be filed with the chief operating officer or employee of the railroad having charge of the operation of such locomotive boiler. A copy shall also be placed under glass in a conspicuous place in the cab of the locomotive before the boiler inspected is put into service.

(For the full text of the Order of 1910, see Annual Report, 1910, Vol. II, p. 131; and for an amendment thereto, see Annual Report 1912, Vol. I, p. 559.)

In the Matter of the Hearing on the Motion of the Commission on the Question of Improvements in and Additions to the Equipment, Service and Property of the CITY ISLAND RAILROAD COMPANY and the PELHAM PARK RAILROAD COMPANY.

CASE NO. 1318: ORDER ENTERED JANUARY 20, 1916

SERVICE—STREET RAILROAD CORPORATIONS—ADDITIONS TO SERVICE—PREVIOUS ORDER ABROGATED.—The Order abrogated without prejudice an Order entered on March 3, 1911, requiring the City Island Railroad Company and the Pelham Park Railroad Company to make certain additions to their service. (See 2 P. S. C. R. [1st Dist. N. Y.] 506.)

In the Matter of Monthly Reports of THE LONG ISLAND RAILROAD COMPANY.

CASE NO. 1400: ORDER ENTERED JANUARY 20, 1916

REPORTS—RAILROAD CORPORATIONS—MONTHLY OPERATING STATISTICS—PREVIOUS ORDER AMENDED.—The Order amended an Order entered herein October 6, 1911, requiring the L. I. R. R. Co. to file monthly reports of its operations, so as to include the provisions of an Order entered on the same day in Case No. 1401 requiring said Company to report monthly the number of car miles operated by its local electric trains, and to require the Company to file monthly reports itemized as follows: (a) Revenues and expenses, in the form in which they are reported monthly to the Interstate Commerce Commission or the Public Service Commission for the Second District; (b) Train miles and car miles classified in accordance with the Uniform System of Accounts, distinguishing passenger train miles and car miles as between steam and electric, and further segregating car miles run by local electric trains (as such trains are defined in the company's tariff schedule); (c) Passengers carried, distinguishing between monthly commutation, local electric (as defined in said tariff circular), and other tickets; (d) Passengers arriving at each of the so-called western terminals; (e) Passengers departing from each of those terminals; (f) The number of commuters from each station in the City of New York and the total number of commuters; (g) The number of local electric train passengers (or tickets) from Flathush Avenue Station.

(An abstract of the Order entered on October 6, 1911, in Case No. 1400 will be found at 3 P. S. C. R. [1st Dist. N. Y.] 701.)

In the Matter of Monthly Reports of THE LONG ISLAND RAILROAD COMPANY as to Operation of Local Electric Trains.

CASE NO. 1401: ORDER ENTERED JANUARY 20, 1916

REPORTS—RAILROAD CORPORATIONS—MONTHLY OPERATING STATISTICS—PREVIOUS ORDER ABROGATED.—The Order abrogated an Order entered herein

on October 6, 1911, requiring the L. I. R. R. Co. to file monthly reports of car miles operated by its local electric trains, the provisions of said Order having been included in an Order entered on even date herewith in Case No. 1400.

(An abstract of the Order entered herein on October 6, 1911, will be found at 3 P. S. C. R. [1st Dist. N. Y.] 700.)

In the Matter of the Application of the MANHATTAN BRIDGE THREE CENT LINE for Authority to Issue \$260,000 par value of its Common Capital Stock in addition to \$190,000 par value of such Stock heretofore issued.

CASE NO. 1802: RESOLUTIONS ADOPTED JANUARY 20, 1916, and
OCTOBER 11, 1916

BOND ISSUE—STREET RAILROAD CORPORATIONS—APPROVAL OF EXPENDITURES—AMORTIZATION REQUIREMENTS.—The Resolution of January 20, 1916, authorized the M. B. T. C. L. to withdraw cash in the amount of \$21,642.08 derived from the sale of stock for \$260,000, approved by Order entered March 13, 1914, and to apply said amount to the payment of the charges stated in the petition except the amount of \$3,211.30 of the item for "Shop and Car Houses", \$5,000 for Engineering, \$16,722.25 for retirements and \$4,546.63 for expenditures on right of way abandoned. The Company was required to create and maintain an amortization fund by setting aside out of income in each year beginning with July 1, 1915, not less than \$1,200 plus four and one-half per cent on all prior payments or reservations until the aggregate amount of \$42,110.13 should be reserved or set aside; the said amortization fund to be for the purpose of amortizing the net amount of \$42,110.13, as follows:

Other intangible street railway capital; legal.....	\$5,000.00
Right of way.....	2,000.00
Special work	3,279.75
Track laying and surfacing.....	5,301.30
Paving	31,726.73
Underground conduits	167.92
Distribution system	642.74
Engineering and superintendence.....	350.00
Miscellaneous construction expenditures.....	573.04
	<hr/>
	\$49,041.48

Less Retirements included in resolution of December 18, 1914	\$2,384.72
Less Expenditures on right of way abandoned....	4,546.63
	<hr/>
	6,931.35

Net \$42,110.13

It was provided that said amortization fund should be used only for the acquisition of property for capital or investment purposes.

On October 11, 1916, the Commission adopted another Resolution, substantially similar to the one above described, authorizing the expenditure of \$31,775.55.

(For the Order entered March 13, 1914, approving the stock issue, and previous Resolutions adopted herein, see 5 P. S. C. R. [1st Dist. N. Y.] 379).

In the Matter of the Hearing on Motion of the Commission regarding Complaint of THE HARLEM BOARD OF COMMERCE, *et al.*, against THE NEW YORK CENTRAL RAILROAD COMPANY—Construction of New Station at 125th Street and Park Avenue in place of the Present Structure.

CASE NO. 2014: ORDER ENTERED JANUARY 20, 1916

STATIONS—RAILROAD CORPORATIONS—IMPROVEMENTS AT 125TH STREET STATION OF N. Y. C. R. R. CO. REQUIRED.—The Order required The New York Central Railroad Company to make the following improvements at the 125th Street station: (1) To construct a new entrance stairway to its northbound platform from the mezzanine of the existing stairway; (2) To provide an enclosed shelter on each platform and, (3) to paint the interior of the waiting room and to provide therein a new tile floor.

In the Matter of the Application of THE CITY OF NEW YORK for a Determination as to the Width and Grades at which Gun Hill Road and its Approaches shall be Extended across the Tracks of the New York and Harlem Railroad Company in the Borough of The Bronx, City of New York.

CASE NO. 2006: ORDER ENTERED JANUARY 20, 1916; RESOLUTION ADOPTED NOVEMBER 29, 1916

GRADE CROSSINGS—WIDENING OF STREET ACROSS RAILROAD—DETERMINATION OF GRADE.—The Order provided (1) that the widened portions of Gun Hill Road should be carried across the tracks of the New York and Harlem Railroad, in the manner shown on a blue print drawing dated June, 1914, introduced herein as City's Exhibit No. 1, and that the cost of the work should be divided between the City of New York and the New York and Harlem Railroad Company, in the manner provided by Section 94 of the Railroad Law; (2) that the existing bridge over the tracks be raised approximately 3.7 feet above the existing elevation to the grades shown on the drawing above mentioned, and that the expense of this work be divided among the State of New York, City of New York, and the New York and Harlem Railroad Company in the manner provided by Section 94 of the Railroad Law; (3) that the existing bridge carrying Gun Hill Road over the tracks be lengthened to allow the construction of additional tracks, and that the

expense of such work be divided between the City of New York and the Company. It was provided, moreover, that the details of construction of the bridge be submitted for the approval of the Commission, that the improvement be carried out in the manner provided by sections 90 to 97 of the Railroad Law, and that the apportionment of the expenses be made by the Commission pursuant to a hearing for an accounting. The Commission approved by the same Order the estimated cost of changing the structure at \$10,000, and the State's share at \$2,500. The Resolution adopted November 29, 1916, approved a revised plan for the grades of Gun Hill Road, submitted by the Board of Estimate and Apportionment.

Hearings closed January 10, 1916.

Arthur DuBois and *E. M. Deegan*, for the Commission.

George H. Walker and *H. M. Bassett*, for The New York Central Railroad Company, and New York and Harlem Railroad Company.

Lamar Hardy, by *W. J. Clarke*, for the City of New York.

L. G. Holleran, for Bronx Parkway Commission.

Charles F. Bishop, for property owners.

Property Owners, in person.

In the Matter of the Application of the NEW YORK MUNICIPAL RAILWAY CORPORATION for Approval of Contract Involving Purchase by SOUTH BROOKLYN RAILWAY COMPANY of stock of PROSPECT PARK AND CONEY ISLAND RAILROAD COMPANY, release by NEW YORK CONSOLIDATED RAILROAD COMPANY to LONG ISLAND RAILROAD COMPANY of reversionary interest in right of way for 14th Street-Eastern Line, and purchase by New York Municipal Railway Corporation from The Long Island Railroad Company of lands and easements at East New York; also approval of form of contract and plans for construction of East New York additional tracks and reconstructing and enlarging East New York Yard; also the application of the South Brooklyn Railway Company for authority to purchase, acquire, take and hold capital stock of the Prospect Park and Coney Island Railroad Company.

CASE NO. 2028: RESOLUTION ADOPTED JANUARY 20, 1916

SECURITIES—STREET RAILROAD CORPORATIONS—TRANSFER OF SECURITIES—APPROVAL OF TRANSFER.—The Resolution approved Article Second of an agreement dated September 17, 1915, between The Long Island Railroad Company, New York Municipal Railway Corporation and New York Consolidated Railroad Company, involving the purchase of certain real property by the New York Municipal Railway Corporation for the sum of \$150,000. (For

previous Orders entered herein, see 6 P. S. C. R. [1st Dist. N. Y.] 443).

Hearings closed October 13, 1915.

L. T. Harkness and *H. M. Chamberlain*, for the Commission.

George D. Yeomans and *A. M. Williams*, for the Brooklyn Rapid Transit Company.

Mr. Swenarton, for the minority stockholders of the Prospect Park and Coney Island Railroad Company.

In the Matter of the Hearing on Motion of the Commission as to Regulations, Practices and Service of THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY with respect to lighting facilities on its multiple unit cars running between New York and Larchmont.

CASE NO. 2051: ORDER ENTERED JANUARY 20, 1916

EQUIPMENT—RAILROAD CORPORATIONS—LIGHTING SYSTEM IN CARS OF N. Y., N. H. & H. R. R. Co.—The Order required The New York, New Haven and Hartford Railroad Company to rewire its 65 multiple unit cars operated between Larchmont and New York City, 50 thereof to be rewired on or before May 1, 1916, and the remaining 15 on or before June 1, 1916, so that when said cars are operated over tracks on which the current for motive power is taken from the third rail the current for lighting shall also be taken from the third rail instead of from storage batteries.

Hearings closed January 17, 1916.

H. H. Whitman, for the Commission.

Lamar Hardy, by *Vincent Victory*, for The City of New York.

Charles M. Sheafe, Jr., by *M. G. Gonterman* and *Mr. Ralston*, for The New York, New Haven and Hartford Railroad Co.

C. K. Blatchly, for Property Owners of Larchmont.

C. M. Baxter, Jr., for Town of Mamaroneck.

Edwin W. Fiske, Mayor of the City of Mount Vernon.

Mr. Perry, for the New Rochelle Association.

In the Matter of the Form of Annual Report for 1915 to be filed by GAS CORPORATIONS and ELECTRICAL CORPORATIONS within the Jurisdiction of the Public Service Commission for the First District in accordance with Section 66 of the Public Service Commissions Law.

CASE NO. 2052: ORDER ENTERED JANUARY 20, 1916

REPORTS—GAS AND ELECTRICAL CORPORATIONS—FORM OF ANNUAL REPORT

PRESCRIBED.—The Order approved the form of annual report to be filed by gas corporations and electrical corporations for the year ending December 31, 1915, as prepared by the Chief Statistician of the Commission, and designated as "Serial Form R. 82".

H. H. Whitman, for the Commission.

In the Matter of the Petition of THE NEW YORK CENTRAL RAILROAD COMPANY and INTERBOROUGH RAPID TRANSIT COMPANY for the approval under Section 54 of the Public Service Commissions Law of an agreement proposed to be entered into by and between said companies.

CASE NO. 2054: ORDER ENTERED JANUARY 20, 1916

BRIDGES—RAILROAD AND RAPID TRANSIT CORPORATIONS—AGREEMENT FOR JOINT USE OF PUTNAM BRIDGE APPROVED.—The Order approved an agreement dated January 20, 1916, between the companies herein, for (1) their joint use of the so-called New York and Putnam Bridge across the Harlem River; (2) giving the Interborough Rapid Transit Company an easement and right of way for the construction, etc. as part of its Eighth Avenue and 162nd Street Connection of a new viaduct or bridge over the Spuyten Duyvil and Port Morris Railroad tracks to form a new easterly approach to the railroad across said bridge, and a means of connection between said railroad and the portion of Eighth Avenue and 162nd Street Connection to be built in or under Sedgwick Avenue, also an easement and right of way for the construction, etc. of a new station as part of said connection to be built as part of or in connection with a new station to be built by The New York Central Railroad Company at or near the easterly end of the New York and Putnam Bridge; (3) requiring The New York Central Railroad Company to construct a new station building for the joint use of the parties hereto, at or near the easterly end of the New York and Putnam Bridge, which is to be the southerly terminus of the trains on the New York and Putnam Railroad; (4) and providing for the ultimate abandonment of the existing station at or near 155th Street.

Hearings closed January 10, 1916.

LeRoy T. Harkness, *H. M. Chamberlain* and *E. J. Crummey*, for the Commission.

Lamar Hardy, by *W. J. Clarke*, for the City of New York.

George H. Walker and *C. J. Beakes*, for The New York Central Railroad Company.

James L. Quackenbush, by *A. E. Mudge*, for the Interborough Rapid Transit Company.

Frank Hedley, Vice-President and General Manager of the Interborough Rapid Transit Company.

J. Harris Jones, for the Bronx Board of Trade.

John Wynne, for property owners.

Henry D. Patton, for the United Property Owners' Association of West Bronx.

Cyrus C. Müller, for Taxpayers' and Citizens' Associations.

In the Matter of the Hearing on Motion of the Commission as to
the Rate Schedule of THE NEW YORK EDISON COMPANY.

CASE No. 1958: ORDER ENTERED JANUARY 27, 1916

METERS—ELECTRICAL CORPORATIONS—MASTER METERS TO MEASURE CURRENT SOLD—SINGLE METER TO EACH CUSTOMER.—The Order denied the application of the Palace Theatre and Realty Company for a rehearing in respect to the provisions contained in the second paragraph of the Order entered herein on October 15, 1915, which read as follows:

"Second: That on and after January 1, 1916, the said company shall determine the amount of current supplied to each customer by means of a master meter or meters installed on the premises of the customer; the said company shall not be permitted to install more than one meter to a service under each contract, except where more than one meter is required to secure proper metering efficiency, the safety of the service or to meet exceptional local service conditions, but in no case shall additional meters be furnished solely for the convenience or purposes of the customer."

(For the full text of the Order and Opinion rendered on the same day see 6 P. S. C. R. [1st Dist. N. Y.] 289, 291-309.)

Hearings closed December 13, 1915.

H. H. Whitman, for the Commission.

Beardsley, Hemmens & Taylor, by *Henry J. Hemmens*, for The New York Edison Co.

Lamar Hardy, by *Vincent Victory*, for The City of New York.

Milo R. Maltbie, for Vivian Green.

Oscar Hirsh, for the Electrical Consumers' Adjustment Co.

In the Matter of the Hearing on Motion of the Commission as to
the Rate Schedule of THE UNITED ELECTRIC LIGHT AND
POWER COMPANY.

CASE No. 1968: ORDER ENTERED JANUARY 27, 1916

METERS—ELECTRICAL CORPORATIONS—MASTER METER TO MEASURE CURRENT SOLD—SINGLE METER TO EACH CUSTOMER.—The Order denied the application of the Palace Theatre and Realty Company for a rehearing in respect to the provisions contained in the second paragraph of the Order entered on October 15, 1915, which read as follows:

"Second: That on and after January 1, 1916, the said company shall determine the amount of current supplied to each customer by

means of a master meter or meters installed on the premises of the customer; the said company shall not be permitted to install more than one meter to a service under each contract, except where more than one meter is required to secure proper metering efficiency, the safety of the service or to meet exceptional local service conditions, but in no case shall additional meters be furnished solely for the convenience or purposes of the customer."

(For the full text of the Order and Opinions rendered on the same day see 6 P. S. C. R. [1st Dist. N. Y.] 289, 292-309.)

In the Matter of the Application of THE LONG ISLAND RAILROAD COMPANY under Section 53 of the Public Service Commissions Law, for Permission to Construct and Operate a Branch beginning at Creedmoor and Extending to a Point west of Lawrence Street, Flushing.

CASE NO. 2022: ORDER ENTERED JANUARY 27, 1916

FRANCHISES AND PRIVILEGES—RAILROAD CORPORATIONS—OPERATION OF A BRANCH LINE APPROVED.—The Order authorized The Long Island Railroad Company to construct a branch from the end of its tracks at Creedmoor to a point west of Lawrence Street, Flushing, and to exercise its franchise under Section 3, Chapter 277 of the Laws of 1839, as amended by Chapter 413 of the Laws of 1862. The approval required the Company to obtain a franchise from the City of New York to cross the following streets:

Springfield Boulevard (Rocky Hill road), Black Stump road, Queens road, North Hempstead turnpike, Lawrence road, Fresh Meadow road, Underhill avenue (Jamaica avenue), Jagger avenue, (Remsen road), Hammell avenue (Hillside drive), Lawrence street.

Hearings closed January 24, 1916.

Arthur DuBois, for the Commission.

Lamar Hardy, by *W. J. Clarke*, for the City of New York.

Clinton Roe, for property owners.

James S. Eadie, for Flushing Association.

Alfred A. Gardner and *L. J. Carruthers*, for The Long Island Railroad Company.

In the Matter of the Hearing on the Motion of the Commission concerning the Regulations, Practices, Service and Rates of Fare of the NEW YORK & QUEENS COUNTY RAILWAY COMPANY, the THIRD AVENUE RAILWAY COMPANY, the THIRD AVENUE BRIDGE COMPANY, THE FORTY-SECOND STREET, MANHATTANVILLE AND ST. NICHOLAS AVENUE RAILWAY COMPANY and the BELT LINE RAILWAY CORPORATION.

CASE No. 2048: ORDER ENTERED JANUARY 27, 1916

RATES AND SERVICE—STREET RAILROAD CORPORATIONS—COMPLAINT WITHDRAWN.—The Order directed the discontinuance of the proceeding upon the request of the complainants.

Hearings closed January 24, 1916.

Edward J. Crummey, for the Commission.

Herbert J. Bickford, for the Third Avenue Railway Company.

Arthur G. Peacock, for the New York & Queens County Railway Company.

In the Matter of the Hearing upon the Complaint of the BROOKLYN CIVIC COMMITTEE with Respect to the Proposed Seating Arrangements in the Cars of the Broadway Elevated Line of the NEW YORK MUNICIPAL RAILWAY CORPORATION.

CASE No. 2049: ORDER ENTERED JANUARY 27, 1916

CARS—ELEVATED RAILROADS—SEATING ARRANGEMENT IN CARS—COMPLAINT DISMISSED.—The Order dismissed the Complaint of the Brooklyn Civic Committee against the proposed seating arrangements in the cars of the Brooklyn elevated lines of the New York Municipal Railway Corporation.

Hearings closed December 27, 1915.

L. T. Harkness, for the Commission.

Leo Kenneth Mayer, for the Brooklyn Civic Committee.

In the Matter of the Petition of THE NEW YORK CENTRAL RAILROAD COMPANY under Section 54 of the Railroad Law for Consent to Discontinue Station at or near 155th Street and Eighth Avenue, City of New York.

CASE No. 2053: ORDER ENTERED JANUARY 27, 1916

STATIONS—RAILROAD CORPORATIONS—DISCONTINUANCE OF STATION APPROVED.—The Order approved the application of The New York Central Railroad Company for permission to discontinue its station on the New York and Putnam Railroad at 155th Street and Eighth Avenue, in the City of New York, to take effect upon the completion and operation of a new station at 162nd Street, and required that all details of construction of the new station be submitted to the Commission for approval.

Hearings closed January 10, 1916.

LeRoy T. Harkness, II. M. Chamberlain and *E. J. Crummey*, for the Commission.

Lamar Hargy, by *W. J. Clarke*, for the City of New York.

George H. Walker and *C. J. Beakes*, for the petitioning company.

James L. Quackenbush and *A. E. Mudge*, for the Interborough Rapid Transit Company.

Frank Hedley, Vice-President and General Manager of the Interborough Rapid Transit Company.

J. Harris Jones, for the Bronx Board of Trade.

John Wynne, for the property owners.

Henry D. Patton, for the United Property Owners' Association of West Bronx.

Cyrus C. Miller, for Taxpayers' and Citizens' Associations.

In the Matter of the Complaint of J. HERBERT WATSON *against* THE BROOKLYN HEIGHTS RAILROAD COMPANY and NASSAU ELECTRIC RAILROAD COMPANY—"Through operation from Prospect Park West to Borough Hall."

CASE NO. 1921: ORDER ENTERED JANUARY 31, 1916

SERVICE—STREET RAILROAD CORPORATIONS—THROUGH OPERATION FROM PROSPECT PARK WEST TO BOROUGH HALL—COMPLAINT DISMISSED.—The Order dismissed the complaint without prejudice to reopening the case after the pavement, which has been removed on account of subway construction on Flatbush Avenue, shall have been restored.

Hearings closed May 6, 1915.

Edward M. Deegan, for the Commission.

Charles F. Murphy, for the complainant.

J. Herbert Watson, complainant, in person.

William D. Niper, for Prospect Heights Association.

D. A. Marsh, for The Brooklyn Heights Railroad Company *et al.*

In the Matter of the Hearing on Motion of the Commission on the Question of Alterations and Changes in the following Grade Crossings of the Tracks of the Far Rockaway Branch of THE LONG ISLAND RAILROAD COMPANY: Atlantic Avenue, Park Avenue, Smith Street, Cornaga Avenue, Clark Street, Hollywood Avenue, Seaview Avenue, Mott Avenue, Carlton Avenue and McNeil Avenue.

CASES NOS. 1936 and 1936-A: ORDER ENTERED JANUARY 31, 1916

GRADE CROSSING ELIMINATION—DETERMINATION OF GRADES—SPECIFICA-

TIONS PRESCRIBED—ESTIMATED COST OF \$1,150,000 APPROVED.—The Order required the elimination of grade crossings of the Far Rockaway Branch of The Long Island Railroad Company at Atlantic Avenue, Park Avenue, Smith Street, Cornega Avenue, Clark Street, Hollywood Avenue, Seaview Avenue, Mott Avenue and Carlton Avenue, in the manner prescribed as follows:

(1) *Atlantic Avenue.* The street at its intersection with the railroad track shall be raised about seventeen and one-half ($17\frac{1}{2}$) feet above its present grade to pass over the tracks of The Long Island Railroad Company which shall be depressed so as to attain a clearance from the top of rail to the lowest member of the bridge of sixteen and one-half ($16\frac{1}{2}$) feet. The grade of street from the west shall not exceed three (3) per cent. The street from the railroad to the east shall descend to meet the present grade of Atlantic Avenue at its intersection with Smith Street. Cedar Street shall have a descending grade to the north from Atlantic Avenue and meet the present grade of the street at Franklin Avenue. In any event, the grade of Cedar Street shall not exceed five (5) per cent. Aztec Place shall descend from Atlantic Avenue to the south on a grade not exceeding five (5) per cent. to meet the present grade of street. Wavecrest Avenue shall be graded to meet the grade of Aztec Place, which is to be raised, and the grade of approach shall be three (3) per cent.

(2) *Park Avenue.* The street at its intersection with the railroad track shall be raised about seven and one-tenth (7.1) feet above its present grade to pass over the tracks of The Long Island Railroad Company which shall be depressed so as to attain a clearance from the top of rail to the lowest member of the bridge of sixteen and one-half ($16\frac{1}{2}$) feet. Park Avenue shall descend from the railroad to the northwest on such a gradient as to meet the existing grade of street at Franklin Avenue. The street grade shall descend from the railroad to the southeast on such a gradient as to meet the raised grade of Smith Street. In any event, the grades of approach on Park Avenue shall not exceed five (5) per cent.

(3) *Smith Street.* The street at its intersection with the railroad track shall be raised about three and three-tenths (3.3) feet above its present grade to pass over the tracks of The Long Island Railroad Company which shall be depressed so as to attain a clearance from the top of rail to the **lowest member** of the bridge of sixteen and one-half ($16\frac{1}{2}$) feet. Smith Street shall descend from the railroad to the north on such a gradient as to meet the existing grade of street at Cornega Avenue. The street grade shall descend from the railroad to the south on such a gradient as to meet the present grade of street at Atlantic Avenue. In any event, the grades of approach on Smith Street shall not exceed five (5) per cent.

(4) *Cornega Avenue.* The street at its intersection with the railroad track shall be raised about one and seven-tenths (1.7) feet above its present grade to pass over the tracks of The Long Island Railroad Company which shall be depressed so as to attain a clearance from the top of rail to the **lowest member** of the bridge of sixteen and one-half ($16\frac{1}{2}$) feet. Cornega Avenue shall descend from the railroad to the west on such a gradient as to meet the existing grade of street at Smith Street. The street grade shall descend from the railroad to the east on such a gradient as to meet the present grade of street at Hollywood Avenue. In any event, the grades of approach on Cornega Avenue shall not exceed five (5) per cent. Samuel Street shall be graded to meet the raised grade of Cornega Avenue and the grade of street shall be three (3) per cent.

(5) *Hollywood Avenue*. The street at its intersection with the railroad track shall be raised about two (2) feet above its present grade to pass over the tracks of The Long Island Railroad Company which shall be depressed so as to attain a clearance from the top of rail to the lowest member of the bridge of sixteen and one-half ($16\frac{1}{2}$) feet. Hollywood Avenue shall descend from the railroad to the north at a grade not to exceed five (5) per cent. The street shall descend from the railroad to the south on such a gradient as to meet the present grade of street at Cornega Avenue. In any event, the grades of approach on Hollywood Avenue shall not exceed five (5) per cent.

(6) *Sea View Avenue*. The street at its intersection with the railroad track shall be raised about two (2) feet above its present grade to pass over the tracks of The Long Island Railroad Company which shall be depressed so as to attain a clearance from the top of rail to the lowest member of the bridge of sixteen and one-half ($16\frac{1}{2}$) feet. Sea View Avenue shall descend from the railroad to the north at a grade not to exceed five (5) per cent. The street shall descend from the railroad to the south on such a gradient as to meet the present grade of street at Cornega Avenue. In any event, the grades of approach on Sea View Avenue shall not exceed five (5) per cent. Loretta Place shall be graded to meet the raised grade of Sea View Avenue and the grade of approach shall be three (3) per cent.

(7) *Mott Avenue*. The street at its intersection with the railroad track shall be raised about two and nine-tenths (2.9) feet above its present grade to pass over the tracks of The Long Island Railroad Company which shall be depressed so as to attain a clearance from the top of rail to the lowest member of the bridge of sixteen and one-half ($16\frac{1}{2}$) feet. Mott Avenue shall descend from the railroad to the northwest at a grade not to exceed five (5) per cent. The street shall descend from the railroad to the south at a grade not to exceed five (5) per cent. Grove Street shall be graded to meet the raised grade of Mott Avenue and the grade of approach shall be three (3) per cent.

(8) *Carlton Avenue*. The street at its intersection with the railroad track shall be raised about thirteen and eight-tenths (13.8) feet above its present grade to pass over the tracks of The Long Island Railroad Company which shall be depressed so as to attain a clearance from the top of rail to the lowest member of the bridge of sixteen and one-half ($16\frac{1}{2}$) feet. Carlton Avenue shall descend from the railroad to the northwest and southeast at grades not to exceed five (5) per cent. Guy Street shall be graded to meet the raised grade of Carlton Avenue and the grade of approach shall be three (3) per cent. Remsen Avenue and Horton Place shall be so graded as to meet the raised grade of Carlton Avenue and the grades of approach shall not exceed five (5) per cent.

Cornega Avenue and Clark Street. Cornega Avenue and Clark Street on the commercial siding leading into the main tracks at Mott Avenue shall remain as grade crossings without prejudice to any future action that the Commission may deem fit to take.

The grades and lines for the proposed improvement shall be consistent with those shown on the four blueprints, the first being entitled "Plan and Profiles of Railroad and Intersecting Streets Far Rockaway Div.—Long Island R. R. (Far Rockaway) Proposed Scheme of Elimination of Grade Crossings" dated June 1915 and marked G. C. 1343 1/4 and received in evidence as Exhibit No. 7 in this proceeding; the second being entitled "Plan and Profiles of Railroad and Intersecting Streets (Far Rockaway) Proposed Scheme of Elimination of Grade Crossings Far Rockaway Div.—Long Island R. R." dated June 1915 and marked G. C. 1343 2/4 and received in evidence as Exhibit No. 8 in this proceeding; the third being entitled "Plan and Profiles of Railroad and

Intersecting Streets Far Rockaway Div.—Long Island R. R. (Far Rockaway) Proposed Scheme of Elimination of Grade Crossings" dated June 1915 and marked G. C. 1343 3/4 and received in evidence as Exhibit No. 9 in this proceeding, and the fourth being entitled "Plan of Railroad and Intersecting Streets Far Rockaway Div.—Long Island R. R. (Far Rockaway) Proposed Scheme of Elimination of Grade Crossings" marked G. C. 1343 4/4 and received in evidence as Exhibit No. 10 in this proceeding.

All bridges shall be closed bridges and shall be constructed of steel, concrete, or masonry, or a combination of these materials.

All details of construction shall be submitted to and shall be subject to the approval of the Public Service Commission for the First District.

FURTHER ORDERED AND DETERMINED that this improvement be carried out in the manner provided by Sections 91 to 97, inclusive, of the Railroad Law, and that the estimated cost of said work, One million one hundred and fifty thousand dollars (\$1,150,000), be and the same hereby is approved, and that the State's share of said cost, now estimated at Two hundred and eighty-seven thousand five hundred dollars (\$287,500), be and the same hereby is appropriated from the funds available for that purpose.

Hearings closed August 11, 1915.

Arthur DuBois, for the Commission.

Williams Goldsticker, for The City of New York.

Nelson B. Lewis, for the Board of Estimate and Apportionment.

Joseph Fried, for the Progress Society of the Rockaways.

George M. Welsh, for Isaac Goldman & Co. and Isaac Goldman.

E. Martin Black, Property owner.

Frederick E. Wendt, Property owner.

Hugh F. Bresman, for Seaview Avenue Property Owners.

Halstead H. Frost, Jr., Property owner.

William J. Morris, Jr., for William A. Morris, property owner.

In the Matter of the Hearing on Motion of the Commission to determine whether an Order should be made Requiring THE BROOKLYN HEIGHTS RAILROAD COMPANY to Operate the Cars on its Lorimer Street Line through to Greenpoint Ferry.

CASE NO. 1960: ORDER ENTERED JANUARY 31, 1916

ROUTING OF CARS—STREET RAILROAD CORPORATIONS—REROUTING OF LORIMER STREET LINE—PROCEEDING DISCONTINUED.—The Order discontinued the proceeding started to determine whether The Brooklyn Heights Railroad Company should be required to file a tariff providing for the rerouting of the Lorimer Street Line so as to operate it through to the Crosstown Depot, instead of terminating said line at Manhattan and Greenpoint Avenues in the Borough of Brooklyn.

Hearings closed May 19, 1915.

E. J. Crummev, for the Commission.

D. A. Marsh, *S. W. Huff* and *William Siebert*, for The Brooklyn Heights Railroad Company.

In the Matter of the Hearing on Motion of the Commission as to the Acts and Regulations of THE NEW YORK EDISON COMPANY and THE UNITED ELECTRIC LIGHT AND POWER COMPANY with respect to forms of contracts and agreements for service in connection with Interior Fire Alarm Systems.

CASE NO. 2030: ORDER ENTERED JANUARY 31, 1916

TARIFF SCHEDULES—ELECTRICAL CORPORATIONS—FORMS OF CONTRACTS FOR SERVICE IN CONNECTION WITH INTERIOR FIRE ALARM SYSTEM—PROCEEDINGS DISCONTINUED.—The Order discontinued the proceeding started upon the motion of the Commission to inquire into the acts and regulation of The New York Edison Company and The United Electric Light and Power Company in relation to their tariff schedules and forms of contracts and agreements for service in connection with interior fire alarm systems.

Hearings closed October 21, 1915.

H. H. Whitman, for the Commission.

Beardsley, Hemmens & Taylor, by *Henry J. Hemmens, Arthur Williams* and *John W. Lieb*, for The New York Edison Co. and The United Electric Light and Power Co.

Henry Schwartz, Jr., appearing in person.

In the Matter of the Hearing on the Motion of the Commission on the question of Regulations, Practices, Equipment, Appliances and Service of THE NEW YORK CENTRAL RAILROAD COMPANY—Operation of Freight Trains on Eleventh Avenue.

CASE NO. 1292: ORDER ENTERED FEBRUARY 3, 1916

GRADE OPERATION OF FREIGHT TRAINS—PROHIBITION SUSPENDED DURING SPECIFIED TIME—FLAGMEN AT CROSSINGS REQUIRED.—The Order suspended from February 5, 1916, to and including February 6, 1916, the operation of an Order entered December 13, 1910, directing The New York Central and Hudson River Railroad Company (predecessor of The New York Central Railroad Company) not to operate any freight trains on Eleventh Avenue in the Borough of Manhattan during certain specified hours. The suspension Order was to be effective only on condition that the Company maintained a watchman or flagman at every street crossing on Eleventh Avenue between Thirty-fourth and Fifty-ninth Street.

(For Opinions as to grade operation in Eleventh Avenue, see 1 P. S. C. R. [1st Dist. N. Y.] 287, 321, 368.)

In the Matter of the Hearing on Motion of the Commission as to

the Necessity of Constructing an Additional Entrance to the Fresh Pond Road Station of the Myrtle Avenue Elevated Line of the NEW YORK CONSOLIDATED RAILROAD COMPANY at Sedgwick Street.

CASE NO. 2032: ORDER ENTERED FEBRUARY 3, 1916

STATION FACILITIES—ELEVATED RAILROADS—ADDITIONAL ENTRANCE TO FRESH POND ROAD STATION OF MYRTLE AVENUE LINE—PROCEEDING DISCONTINUED.—The Order discontinued the proceeding herein upon evidence of the construction by the New York Consolidated Railroad Company of the additional entrance desired by the Commission.

Hearings closed October 26, 1915.

Arthur DuBois, for the Commission.

George J. Rhodius, for the St. James Park Improvement Association.

John J. Dempsey and *M. B. Hoffman*, for the New York Consolidated Railroad Company.

In the Matter of the Hearing on the Motion of the Commission on the question of Improvements in and Additions to the Service of THE LONG ISLAND RAILROAD COMPANY, in respect to the safety precautions at the grade crossings at Fresh Pond Road and at Metropolitan Avenue, Borough of Queens, City of New York.

CASE NO. 772: ORDER ENTERED FEBRUARY 10, 1916

GRADE CROSSINGS—SAFETY PRECAUTIONS—FENCE ALONG RIGHT-OF-WAY—PREVIOUS ORDER ABROGATED.—The Order abrogated an Order entered October 9, 1908, directing The Long Island Railroad Company to construct and maintain a fence along its right-of-way at Metropolitan Avenue, in the Borough of Queens.

In the Matter of the Application of THE CITY OF NEW YORK for a determination as to the manner in which the following Streets shall be extended across the tracks of NASSAU ELECTRIC RAILROAD COMPANY and NEW YORK MUNICIPAL RAILWAY CORPORATION in the Borough of Brooklyn, City of New York: 82nd Street, New Utrecht Avenue.

CASE NO. 1971: RESOLUTION ADOPTED FEBRUARY 10, 1916

GRADE CROSSINGS—EXTENSION OF STREETS ACROSS RAILROADS—PLANS AP-

PROVED.—The Resolution approved plans adopted by the Board of Estimate and Apportionment of the City of New York, on December 10, 1915, approved by the Mayor December 18, 1915, showing a change in the lines and grades of the street system within the territory bounded by 81st Street, Eighteenth Avenue, 84th Street, Bay 16th Street and New Utrecht Avenue. By an order entered herein August 18, 1915, the Commission had determined that 82nd Street, between New Utrecht and Eighteenth Avenues, and New Utrecht Avenue between 81st and 86th Streets, should be carried across the tracks of the Nassau Electric Railroad Company at grade. (See 6 P. S. C. R. [1st Dist. N. Y.] 426).

Hearings closed August 3, 1915.

Arthur DuBois, for the Commission.

M. B. Hoffman, for the Nassau Electric Railroad Company and the New York Municipal Railway Corporation.

Nelson B. Lewis, Chief Engineer of the Board of Estimate and Apportionment.

W. Goldsticker, for the City of New York.

In the Matter of the Application of NEW YORK RAILWAYS COMPANY
and CENTRAL CROSSTOWN RAILROAD COMPANY OF NEW YORK
for the Approval of an Operating Agreement or Lease under
Section 54 of the Public Service Commissions Law.

CASE NO. 2057: ORDER ENTERED FEBRUARY 10, 1916

CONTRACTS AND LEASES—STREET RAILROAD CORPORATIONS—OPERATING AGREEMENT APPROVED.—The Order approved an agreement for the operation of the street surface railroad of the Central Crosstown Railroad Company of New York by the New York Railways Company, for a period of one year from January 1, 1916.

Hearings closed January 31, 1916.

H. M. Chamberlain, for the Commission.

James L. Quackenbush, by *Arthur G. Peacock*, for New York Railways Company.

In the Matter of the Hearing on the Motion of the Commission in
Respect to the Question of Improvements in and Additions
to the Regulations, Practices, Equipment, Tracks and Sta-
tions of the INTERBOROUGH RAPID TRANSIT COMPANY on the
elevated lines operated by it, and particularly the signals and
safety devices.

CASE NO. 2020: ORDER ENTERED FEBRUARY 17, 1916

SIGNAL SYSTEM—RAPID TRANSIT CORPORATIONS—INSTALLATION OF SIGNAL

SYSTEM ON ELEVATED LINES.—The Order amended an Order entered on December 10, 1915, so as to require the Interborough Rapid Transit Company to test an installation of one or more systems of signals on some portion of its elevated lines, with a view of choosing some system that would prevent collisions, and report the results to the Commission on or before March 1, 1917.

(For an abstract of the Order of December 10, 1915, see 6 P. S. C. R. [1st Dist. N. Y.] 772.)

In the Matter of the Hearing on the Motion of the Commission on the Subject of Proposed Changes in the Existing Structures at the point where Howard Avenue Intersects and Crosses the Tracks of the Atlantic Division of THE LONG ISLAND RAILROAD COMPANY in the Borough of Brooklyn, City of New York.

CASE NO. 1959: RESOLUTION ADOPTED FEBRUARY 24, 1916

SAFETY PRECAUTIONS—RAILROAD CORPORATIONS—WALL AT STREET CROSSING—PLANS APPROVED.—The Resolution approved a plan (Drawing No. A-389) showing details of a reinforced concrete wall to be constructed on the north side of the Atlantic Avenue cut, at the intersection of Howard Avenue, in the Borough of Brooklyn.

(For an Opinion adopted on December 7, 1915, and an Order entered pursuant thereto, requiring the erection of said wall, see 6 P. S. C. R. [1st Dist. N. Y.] 316.)

In the Matter of the Application of the OCEAN ELECTRIC RAILWAY COMPANY for the Permission and Approval of the Public Service Commission for the First District of the Construction and Operation of an Extension of its Street Surface Railroad upon Private Property of the Neponsit Realty Company in the Borough and County of Queens, City of New York, pursuant to Section 170 of the Railroad Law and Section 53 of the Public Service Commissions Law.

CASE NO. 2004: ORDER ENTERED FEBRUARY 24, 1916

FRANCHISES AND PRIVILEGES—STREET RAILROAD CORPORATIONS—OPERATION OF EXTENSION APPROVED—REHEARING DENIED.—The Order entered February 24, 1916, denied the application of the Corporation Counsel of the City of New York for a rehearing of the proceedings herein, in which the Commission, by an order entered September 24, 1915, approved the operation of an

extension by the Ocean Electric Railway Company on the property of the Neponsit Realty Company.

(For the abstract of the Order of September 24, 1916, see 6 P. S. C. R. [1st Dist. N. Y.] 434).

In the Matter of the Filing by Gas and Electric Corporations Subject to the Jurisdiction of the Public Service Commission for the First District of Franchise and Corporate Books, Records, Contracts, Documents and Papers.

CASE NO. 2068: ORDER ENTERED MARCH 2, 1916

CORPORATE AND FRANCHISE DOCUMENTS—GAS AND ELECTRICAL CORPORATIONS—ORDER DIRECTING THE FILING OF DOCUMENTS.—The Order required every gas and electrical corporation under the jurisdiction of the Commission to file, within 30 days for itself and for each of the companies operated or controlled by it, certified copies of documents already executed and not yet filed, and within five days after execution certified copies of documents thereafter executed, as follows:

1. Certificate of incorporation including those of predecessor companies;
2. By-laws now in force;
3. Supplemental or amended certificates of incorporation including those of predecessor companies;
4. Any act of the Legislature granting, confirming or limiting any right or franchise of the corporation or affecting the right of the corporation to use or exercise any franchise;
5. Transcripts of corporate records relative to increase or decrease of capital stock of present or predecessor companies and authorization of mortgages, bond issues and other corporate securities proposed, outstanding or uncanceled;
6. Consolidation and merger agreements including those of predecessor companies;
7. Consents of local authorities constituting franchise rights, including those granted to predecessor companies;
8. Agreements with and permits from the city and federal authorities;
9. All court orders, federal or state, in connection with the appointment of a receiver or receivers for present or predecessor companies and all orders requiring the operation of the plant, electrical or gas, or both, by such receiver and the sale, report of sale, order confirming the report of such sale of the property and franchises of the company; also all judicial decisions relative to such orders or the application therefor. In lieu of furnishing such orders and decisions there may be furnished exact references to all such orders and decisions with the date thereof and also the dates of all applications for such orders.
10. Deeds, mortgages and other documents in the chain of corporation's title, not including under this requirement documents relating exclusively to specific parcels of real estate.
11. Deeds, leases or other instruments by which present and predecessor companies acquired title to or interest in any piece or parcel of realty within the First District now owned in fee or otherwise

owned, held or controlled (in lieu of complying with this requirement there may be furnished original maps or blueprints showing the location and boundaries of each piece or parcel of land aforesaid and indicating for each such piece or parcel the name of the parties to all deeds, subsisting leases or conveyances to present or predecessor companies, the nature of the instrument and the interest conveyed thereby, its date and if recorded, the liber and page where recorded, but full copies must be furnished of instruments not recorded);

12. All agreements of whatever description entered into with railroad, express, terminal or freight warehouse companies, stage, motor bus or steam companies or with any other company or companies subject to the jurisdiction of this Commission. Where the agreement is not in writing the terms and stipulations thereof embodied in a statement to this Commission are required to be filed;
13. All court decisions in actions in which the corporation or predecessor companies were parties affecting the corporation's intercorporate relations or the validity of the corporation's franchises, or affecting the duties and obligations of the corporation; or in lieu thereof exact references to all such decisions;
14. A map drawn to a scale of not more than two thousand feet to the inch showing all pipes, conduits and other structures constructed or now maintained by the corporation in public streets.

The corporations or persons operating gas plants, electric plants or gas and electric plants were exempted from compliance with this order where such corporations or persons manufacture or produce gas for distribution on or through private property solely for their own use or the use of their tenants and not for sale to others and where such corporations or persons generate or distribute electricity solely on or through private property for railroad or street railroad purposes or for their own use or the use of their tenants and not for sale to others.

In the Matter of the Filing of Information by the INTERBOROUGH RAPID TRANSIT COMPANY concerning the Final Disposition of Amounts Temporarily Charged to the Account,—Other Suspense.

CASE NO. 2072: ORDER ENTERED MARCH 8, 1916; RESOLUTION ADOPTED MARCH 30, 1916

ACCOUNTS AND FUNDS—RAPID TRANSIT CORPORATIONS—SUSPENSE ACCOUNT —REPORT OF AMOUNT CHARGED REQUIRED.—The Order required the Interborough Rapid Transit Company to file with the Commission a sworn statement setting forth each and every item charged to the prescribed account (No. 332) Other Suspense to the close of the fiscal year ended June 30, 1915, and stating the final disposition of each item; such items to be properly classified according to their final disposition among the groups of accounts pertaining to the following:

- (1) Cost of Equipment of the Existing Railroad (Rapid Transit Contracts 1 and 2).
- (2) Cost of Construction of the Railroad (Contract No. 3).
- (3) Cost of Equipment of the Railroad (Contract No. 3).

- (4) Cost of Elevated Extensions (Certificate granted by the Commission to the Interborough Rapid Transit Company March 19, 1913).
- (5) Cost of Additional Elevated Tracks (Certificate granted by the Commission to the Manhattan Railway Company March 19, 1913).
- (6) Cost of Manhattan Power Plant Improvements (Under the last mentioned certificate).
- (7) Corporate Surplus.
- (8) Other accounts (specified).

It was also provided that in the event that the Company included in said suspense account any temporary credit items (i. e., credit entries other than those required to make final disposition of debit items, a sworn report should likewise be filed, setting forth the disposition of each of such temporary credit items, classified among the foregoing groups of accounts and further segregating additions to surplus, as follows:

- (a) Reimbursement of operating account of the existing railroad (Contracts 1 and 2).
- (b) Reimbursement of the operating account of the elevated railway properties.
- (c) Contracts 1 and 2 other than item (a).
- (d) Contract No. 3.
- (e) Elevated division.
- (f) Miscellaneous operations.

The Resolution of March 30, 1916, directed that the Secretary of the Interborough Rapid Transit Company be informed that the return made pursuant to the filing order in the case herein was not in compliance with the provisions of the Order, in that it failed to set forth the final disposition of each separate item listed in the statement as charged or credited to the Account (332) Other Suspense, to the close of the fiscal year ended June 30, 1915, and directed the Company to supplement the return with additional information required by the Order.

In the Matter of the Application of THE NEW YORK CONNECTING RAILROAD COMPANY for the approval by the Public Service Commission, First District, of the issuance by said Company of \$5,000,000 face value of 4½ per cent First Mortgage Gold Bonds, to be dated February 1st, 1914, and known as Series B.

CASE NO. 1810: RESOLUTION ADOPTED MARCH 9, 1916

BOND ISSUE—RAILROAD CORPORATIONS—APPROVAL OF EXPENDITURES.—The Order authorized the Company to withdraw cash in the amount of \$106,677.48 from the proceeds of the sale of \$5,000,000 4½ per cent bonds authorized to be issued under the Order of the Commission Entered April 14, 1914, to cover capital expenditures and to apply the same to the payment of the following charges enumerated in the application:

Road and general expenditures.....	\$1,706,676.77
Material credit.....	1,003,985.08

Total	\$702,621.69
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(For the Order of April 14, 1914, and previous Resolutions approving expenditures, see 5 P. S. C. R. [1st Dist. N. Y.] 449 and 6 id. 342.)

Hearings closed April 9, 1914.

O. C. Semple, for the Commission.

O'Brien, Boardman & Platt, by *Philip W. Boardman*, for the New York Connecting Railroad Co.

In the Matter of the Hearing on the Motion of the Commission as to Service on the Rockaway Beach Division of THE LONG ISLAND RAILROAD COMPANY.

CASE No. 2067: ORDERS ENTERED MARCH 9 AND 23, 1916

SERVICE—RAILROAD CORPORATIONS—ADDITIONS TO SERVICE—OPERATION OF TWO ADDITIONAL TRAINS REQUIRED.—The first Order required The Long Island Railroad Company to operate on and after May 1, 1916, the following two additional trains: (1) A train leaving Rockaway Park about 7:11 A. M., and arriving at Flatbush Avenue at 7:47 A. M.; and (2) a train leaving Flatbush Avenue about 5:21 P. M., and arriving at Rockaway Park at about 5:58 P. M. The second Order amended the above Order so as to require said additional trains only from May 1 to December 25 of each year.

Hearings closed March 6, 1916.

Arthur DuBois, for the Commission.

C. L. Addison, for The Long Island Railroad Company.

S. H. Mollison, for the Belle Harbor Property Owners' Association.

Francis R. Pixotta, for the Belle Harbor Property Owners' Association and the Rockaway Park Board of Trade.

In the Matter of the Application under Section 9, Article II, and Section 89, Article III, of the Railroad Law, of JAY STREET EXTENSION RAILROAD CORPORATION for a certificate of Public Convenience and Necessity for the Construction of a Railroad in the Borough of Brooklyn, City of New York, and determination by the Commission of the manner of crossing certain streets in said Borough.

CASE No. 2071: RESOLUTIONS ADOPTED MARCH 9, 1916

CERTIFICATES OF CONVENIENCE AND NECESSITY—RAILROAD CORPORATIONS—

RESOLUTION GRANTING CERTIFICATE—CROSSINGS AT GRADE ALLOWED.—The first Resolution adopted on March 9, 1916, granted the Company a certificate of convenience and necessity for the operation of a steam railroad on the following route:

Beginning at two points upon the railroad of The Jay Street Connecting Railroad, at or near the intersection of John and Jay streets, in the Borough of Brooklyn, constituting the northeasterly termini of the railroad to be built hereunder, and running from one of such points to a point at the westerly side of Main street, at or near its intersection with Plymouth street, the westerly terminus of the road; to a point at the southerly side of Water street between Main and Washington streets, the southwesterly terminus of the road; to a point at the easterly side of Pearl street, south of Water street, the southerly terminus of the road; to a point at the easterly side of Bridge street near Water street, the southeasterly terminus of the road; and running from the other of such points to a point at the easterly side of Bridge street near Plymouth street, the easterly terminus of the road.

The second Resolution adopted on the same day authorized the operation of the above railroad at grade upon the streets covered by the route.

Hearings closed March 6, 1916.

H. M. Chamberlain, for the Commission.

Lamar Hardy, by *Vincent Victory*, for the City of New York.

Cullen & Dykman, by *Arthur E. Goddard*, for the applicant company.

In the Matter of the Hearing on the Motion of the Commission on the Question of Additions to the Service and Equipment of the NEW YORK AND QUEENS COUNTY RAILWAY COMPANY.

CASE No. 1848: RESOLUTION ADOPTED MARCH 16, 1916

SERVICE AND EQUIPMENT—STREET RAILROAD CORPORATIONS—ADDITIONS TO SERVICE AND EQUIPMENT—PLANS APPROVED.—The Resolution approved plans for improvements in equipment required to be made by the New York and Queens County Railway Company, by an Order entered April 23, 1915, as amended September 24, 1915; said plans having been submitted by the Company and entitled as follows: "A. C. and D. C. Feeder Layout Showing Present and Proposed Feeders of New York and Queens County Railway Company—Sheet No. 1,—2902-C," dated October 11, 1915, and "Proposed Method of Feeding Trolley—Queensboro Bridge Plaza—Sketch No. 1—3229", dated November 26, 1915.

(For the previous Orders above mentioned, see 6 P. S. C. R. [1st Dist. N. Y.] 387.)

Hearings closed June 4, 1915.

Edward J. Crummey, for the Commission.

James L. Quackenbush, by *Arthur G. Peacock*, for the New York and Queens County Railway Company.

John Halley Clark, Jr., for the Flushing Association.

In the Matter of the Application of THE JAY STREET CONNECTING RAILROAD for Permission to Exercise a Franchise for the Construction and Operation of a Railroad on John, Jay, Pearl, Plymouth, Adams, Main, Bridge, Water and Washington Streets, in the Borough of Brooklyn, City of New York, pursuant to the provisions of Section 53 of the Public Service Commissions Law.

CASE NO. 2040: ORDER ENTERED MARCH 23, 1916

FRANCHISES AND PRIVILEGES—RAILROAD CORPORATIONS—FRANCHISE ROUTE IN EXCESS OF CHARTER ROUTE—PROCEEDINGS DISCONTINUED.—It appearing that the franchise granted by the Board of Estimate and Apportionment of the City of New York, for the exercise of which the approval of the Commission was requested, included certain streets not covered by the Company's charter or the certificate of convenience and necessity granted by the Commission, the proceedings herein were discontinued.

Hearings closed December 27, 1915.

H. M. Chamberlain, for the Commission;

Cullen & Dykman, by *W. N. Dykman* and *J. A. Dykman*, for applicant company;

William J. Clarke, for the City of New York;

E. T. Horwill, for the E. W. Bliss Company;

E. C. Shaler, for the Brooklyn Rapid Transit Company.

In the Matter of the Application of THE JAY STREET CONNECTING RAILROAD under Section 89 of the Railroad Law to Determine the Manner of Crossing John, Jay, Pearl, Plymouth, Adams, Main, Bridge, Water and Washington Streets in the Borough of Brooklyn, City of New York, with the Tracks of The Jay Street Connecting Railroad.

CASE NO. 2041: ORDER ENTERED MARCH 23, 1916

CROSSINGS—RAILROAD CORPORATIONS—MANNER OF CROSSING STREETS NOT DETERMINED—DISCONTINUANCE OF PROCEEDINGS.—The Order discontinued the proceedings upon the application of The Jay Street Connecting Railroad for a determination of the manner of crossing John, Jay, Pearl, Plymouth, Adams, Main, Bridge, Water and Washington Streets, in the Borough of Brooklyn, because the franchise obtained by the Company from the City of New York, under which said crossings were to be constructed, was an amended franchise which included certain extensions not described in the Company's certificate of incorporation or in the certificate of convenience and necessity granted by the Commission.

Hearings closed December 27, 1915.

H. M. Chamberlain, for the Commission.
Cullen & Dykman, by *W. N. Dykman* and *J. A. Dykman*, for the applicant company.
William J. Clarke, for the City of New York.
E. T. Horwill, for the E. W. Bliss Company.
E. C. Shaler, for The Coney Island and Brooklyn Railroad Company.

In the Matter of the Hearing on the Motion of the Commission Concerning the Regulations, Practices, Equipment and Service of the ADAMS EXPRESS COMPANY in respect to the Maintenance of an Office and Agent at Broad Channel in the Borough of Queens, City of New York, and the Collection, Protection and Delivery of Packages and Freight at said point.

CASE NO. 2055: ORDER ENTERED MARCH 23, 1916

SERVICE—EXPRESS CORPORATIONS—SERVICE AT BROAD CHANNEL—PROCEEDING DISCONTINUED.—The Order discontinued without prejudice the proceeding herein started to determine whether the Adams Express Company should be required to maintain an office at Broad Channel, in the Borough of Queens. Hearings closed March 13, 1916.
Edward J. Crummey, for the Commission.
T. B. Harrison, Jr., for the Adams Express Co.

In the Matter of the Application of THE JAY STREET CONNECTING RAILROAD and JAY STREET EXTENSION RAILROAD CORPORATION for Permission and Approval as to a Proposed Merger and Consolidation of said Corporations.

CASE NO. 2077: ORDER ENTERED MARCH 28, 1916

CONSOLIDATIONS AND MERGERS—RAILROAD CORPORATIONS—AGREEMENT OF CONSOLIDATION APPROVED.—The Order approved the agreement of consolidation between The Jay Street Connecting Railroad and Jay Street Extension Railroad Corporation. Hearings closed March 27, 1916.
H. M. Chamberlain, for the Commission.
Arthur E. Goddard, for the applicant companies.
Lamar Hardy, by *W. J. Clarke*, for the City of New York.

In the Matter of the Hearing on the Motion of the Commission on the question of Changes or Improvements in the Regulations, Practices and Service of RAILROAD CORPORATIONS, STREET RAILROAD CORPORATIONS AND COMMON CARRIERS SUBJECT TO THE JURISDICTION OF THE COMMISSION in Respect to Smoking on Passenger Cars and Stations.

CASE NO. 1089: ORDERS ENTERED MARCH 30, APRIL 27, AND JUNE 15, 1916

SMOKING IN CARS—RAPID TRANSIT AND STREET SURFACE RAILROADS—PROHIBITION SUSPENDED UNDER CERTAIN CONDITIONS.—The Order of March 30, 1916, amended an Order entered August 1, 1913, as amended, so as not to require The Brooklyn Heights Railroad Company, the Nassau Electric Railroad Company, the Brooklyn, Queens County and Suburban Railroad Company, the South Brooklyn Railway Company and the Coney Island and Gravesend Railway Company to prohibit smoking on specified convertible cars during the summer when the side panels should be removed therefrom, provided that smoking should be allowed only on the four rear cross seats on each side of said cars, the rear longitudinal seat being counted as one of the four.

The Order entered April 27, 1916, suspended for a period of six months from May 1, 1916, the operation of the Order entered August 1, 1913, as amended, prohibiting the smoking on cars so as to exempt from said prohibition the convertible cars of the Third Avenue Railway Company, Dry Dock, East Broadway and Battery Railroad Company, and Forty-second Street, Manhattanville and St. Nicholas Avenue Railway Company, under the substantially similar conditions as those provided in the Order of March 30, 1916, above described.

The Order entered June 15, 1916, suspended for a period of five months from the date thereof the Order entered August 1, 1913, as amended, prohibiting smoking on cars so as to exempt from said prohibition the low level center entrance cars of the New York Railways Company when the windows shall be removed therefrom, provided smoking shall be permitted only on the circular seat in the rear of the car and on one seat on each side immediately in front thereof.

(For the provisions of the Order of August 1, 1913, see 4 P. S. C. R. [1st Dist. N. Y.] 579; and for amendments thereof, see 5 P. S. C. R. [1st Dist. N. Y.] 453, and 6 *id.*, 440.)

In the Matter of the Complaint of O. E. TAYLOR *against* the UNION RAILWAY COMPANY OF NEW YORK CITY Alleging the Use of Wrong Destination Signs on the Clason Point Cars.

CASE NO. 1998: ORDER ENTERED MARCH 30, 1916

DESTINATION SIGNS—STREET RAILROAD CORPORATIONS—COMPLAINT DISMISSED.—The Order dismissed the complaint herein.

In the Matter of the Hearing on the Complaint of ATLANTIC AMUSEMENT COMPANY *against* EDISON ELECTRIC ILLUMINATING COMPANY OF BROOKLYN that the Provision in Rate "B" Low Tension Contract for a Term of Five Years is Unreasonable.

CASE NO. 2000: ORDER ENTERED MARCH 30, 1916

RATES—ELECTRICAL CORPORATIONS—COMPLAINT DISMISSED.—The Order dismissed the complaint of the Atlantic Amusement Company against The Edison Electric Illuminating Company of Brooklyn relating to the provision in the Company's Rate "B" Low Tension Contract.

Hearings closed October 15, 1915.

Arthur DuBois, for the Commission.

Hervey, Barber & McKee, by *Lanier McKee*, for the Atlantic Amusement Company.

Hatch & Sheehan, by *Ashley T. Cole*, for The Edison Electric Illuminating Company of Brooklyn.

In the Matter of the Hearing on the Motion of the Commission Concerning the Regulations, Practices, Equipment, Appliances, Property and Service of THE LONG ISLAND RAILROAD COMPANY on its Lines Within the First District.

CASE NO. 1891: ORDER ENTERED APRIL 6, 1916

SERVICE—RAILROAD CORPORATIONS—ADDITIONS TO SERVICE—PREVIOUS ORDER AMENDED.—The Order amended the final Order entered herein on January 13, 1915, as amended by final Orders "A" and "B", entered on February 9 and February 16, 1915, respectively, so as to require The Long Island Railroad Company to comply with the provisions contained in items 1, 2, 3 and 7, which are to read as follows:

(1) To install and operate daily except Sundays on and after April 20, 1916, a westbound train which shall leave Woodhaven at or about 8:35 A. M., and Railroad Avenue at or about 8:40 A. M., and shall be operated to Flatbush Avenue Station and shall stop for the purpose of taking on and leaving passengers at all stations between Woodhaven and Flatbush Avenue Station.

(2) To install and operate daily except Sundays on and after April 20, 1916, an eastbound train which shall leave Pennsylvania Station at or about 10:25 P. M., and shall be operated to Far Rockaway Station via the Short or Jamaica Bay Trestle Route, and shall stop for

the purpose of taking on and leaving passengers at Brooklyn Manor Station and at all other stations between Pennsylvania Station and Far Rockaway Station at which the corresponding train now stops, as provided in the Company's Time Table No. 80 taking effect October 17, 1915.

(3) To install and operate daily except Sundays, on and after April 20, 1916, an eastbound train, which shall leave Pennsylvania Station at or about 3:40 P. M., and shall be operated to Rockaway Park, stopping at Brooklyn Manor Station and having a suitable connection at Woodhaven Junction for passengers from Brooklyn.

(7) To stop daily except Sundays, on and after April 20, 1916, at Morris Park Station on the Atlantic Division, for the purpose of taking on and leaving passengers, train No. 1486 leaving Flatbush Avenue Station at or about 6:23 P. M., and scheduled to arrive at Jamaica Station at or about 6:41 P. M.

The Company was further required to continue in service between Pennsylvania Station and Far Rockaway Station, via the Jamaica Route, eastbound trains leaving Pennsylvania Station at or about 2:06 P. M., 3:00 P. M., 3:45 P. M., 8:24 P. M., 9:09 P. M., 11:30 P. M., and 1:10 A. M., or in lieu of the 1:10 A. M. train, a train leaving Pennsylvania Station between 12:30 A. M. and 1:30 A. M. Notice of the change was required to be posted at the Flatbush Avenue Station and at the Morris Park Station.

(For the previous Orders entered herein, see 6 P. S. C. R. [1st Dist N. Y.] 337.)

Rehearing closed April 3, 1916.

Edward M. Deegan, for the Commission.

J. B. Austin, Jr., and *Joseph F. Keany*, for The Long Island Railroad Company.

W. N. Seligsberg and *Frederick T. Davies*, for the Progress Society of the Rockaways, and other petitioners in the original proceeding.

F. J. Allen, in person.

In the Matter of the Application of THE LONG ISLAND RAILROAD COMPANY for the Consent and Approval of the Public Service Commission for the First District, to change the name of the Station known as Ramblersville, in the Borough of Queens, City of New York, to Howard Beach, pursuant to Section 54 of the Railroad Law as amended in 1915.

CASE NO. 2073: ORDER ENTERED APRIL 6, 1916

STATIONS—RAILROAD CORPORATIONS—NAME OF STATION CHANGED FROM RAMBLERSVILLE TO HOWARD BEACH.—The Order authorized The Long Island Railroad Company to change the name of Ramblersville Station to Howard Beach.

Hearings closed April 4, 1916.

Arthur DuBois, for the Commission.

C. L. Addison, for The Long Island Railroad Company.

M. Nussbaum and *M. C. Dobson*, for the Howard Beach Estate.

M. S. Webster, F. J. Riley and Alexander Miller, for residents of Ramblersville.

In the Matter of the Application of THIRD AVENUE RAILWAY COMPANY for the Permission and Approval of the Public Service Commission for the First District Pursuant to the Provisions of Section 53 of the Public Service Commissions Law for the Exercise of the Franchise to Maintain and Operate an Existing Extension of its Street Surface Railway in the Borough of Manhattan, City of New York.

CASE No. 2076: ORDER ENTERED APRIL 6, 1916

FRANCHISES AND PRIVILEGES—STREET RAILROAD CORPORATIONS—EXERCISE OF FRANCHISE APPROVED.—The Order approved the exercise of a franchise granted by the Board of Estimate and Apportionment of the City of New York to the Third Avenue Railway Company by contract dated February 16, 1916, for the following route:

"Beginning at and connecting with the existing double track street surface railway of the said party of the second part (Third Avenue Railway Company) on Amsterdam avenue at or near the intersection of said avenue with Fort George avenue; thence northerly, westerly and southerly in, upon and along said Fort George avenue as it winds and turns to its intersection with Audubon avenue, together with a loop terminal at said intersection, constructed within the present roadway of said Fort George avenue."

Hearings closed April 3, 1916.

H. M. Chamberlain, for the Commission.

Lamar Hardy, by W. J. Clarke, for the City of New York;

Shelton E. Martin, for the applicant company.

In the Matter of the Application of NEW YORK CONSOLIDATED RAILROAD COMPANY for Approval of a Proposed Agreement with THE LONG ISLAND RAILROAD COMPANY for Joint Operation to Rockaway Beach during the summer of 1916.

CASE No. 2085: RESOLUTION ADOPTED APRIL 6, 1916

TRACKAGE RIGHTS—RAILROAD AND RAPID TRANSIT CORPORATIONS—AGREEMENT FOR JOINT OPERATION TO ROCKAWAY BEACH.—The Resolution approved an agreement between the petitioners relative to the operation of the so-called Rockaway Beach service during the season of 1916, pursuant to an agreement dated April 12, 1898, between The Long Island Railroad Company and the Brooklyn Union Elevated Railroad Company.

In the Matter of the Hearing on the Motion of the Commission upon the Question Whether THE LONG ISLAND RAILROAD COMPANY should be Directed and Required to Construct, Erect and Provide for Use a New Station with the Necessary Platforms, Stairways and other appurtenances at or near the point at which said Company's Main Line Intersects and Crosses Jamaica Avenue in the Borough of Queens, City of New York.

CASE NO. 1637: ORDER ENTERED APRIL 13, 1916

STATION FACILITIES—RAILROAD CORPORATIONS—ADDITIONAL STATION ON L. I. R. R. MAIN LINE AT JAMAICA AVENUE—PLAN APPROVED.—The Order approved the plan submitted by The Long Island Railroad Company for the construction of a new station on the Main Line at Jamaica Avenue, in the Borough of Queens.

In the Matter of the Hearing on the Motion of the Commission as to Regulations and Requirements Governing the Installation and Use of Electrical Equipment by Public Service Corporations Subject to the Jurisdiction of the Public Service Commission for the First District.

CASE NO. 2062: ORDER ENTERED APRIL 13, 1916; RESOLUTIONS ADOPTED NOVEMBER 6, 1916

ELECTRICAL EQUIPMENT—RAILROAD, LIGHTING AND POWER CORPORATIONS—RULES GOVERNING CHANGES AND ADDITIONS TO ELECTRICAL EQUIPMENT.—The Order prescribed rules and regulations as to all changes and additions to electrical equipment and apparatus used by railroad, lighting and power companies, as follows:

PUBLIC SERVICE COMMISSION FOR THE FIRST DISTRICT, NEW YORK
Rules Governing Electrical Construction of the Properties of Electric Lighting, Railway and Power Companies

<i>Heading</i>	<i>Page No.</i>
Grounding	
Generators	
Motors	
Synchronous converters	
Transformers, regulators and auto-starters	
Storage batteries	
Switches	
Switchboards and compartments	
Lightning arresters	
Circuits, conduits and conductors	

Buildings other than generating and substations.....
 Service switches and meters

The following rules shall apply to the electrical equipment herein described and used only in generating stations and distributing substations:

Grounding

- (a) The non-current carrying metal parts of all electrical equipment such as the frames of switchboards, switch and bus compartments, transformers, oil switches, etc. operating on circuits at a voltage of over 150 volts to ground or 180 volts for regulation, except equipment used in connection with grounded direct current circuits and direct current series circuits, shall be grounded. But where, under the above exception, such non-current carrying metal parts are left ungrounded, insulating barriers, floors, platforms or mats shall be provided so that no person can readily simultaneously touch such ungrounded portion and any grounded object, including floors not of insulating material.
- (b) The non-current carrying metal parts of all electrical equipment such as the frames of generators, motors, converters, etc., operating on circuits at a voltage of over 150 volts to ground or 180 volts for regulation, except equipment used in connection with grounded direct current circuits and direct current series circuits, shall be grounded, or mounted so as to prevent a difference of potential between the floor and the non-current carrying metal parts of the machine. But where under the above exception, such non-current carrying metal parts are left ungrounded, or not mounted to prevent a difference of potential, insulating barriers, floors, platforms or mats shall be provided so that no person can readily simultaneously touch such ungrounded portion and any grounded object, including floors not of insulating material.
- (c) Metal conduits and metal sheathing encasing conductors shall be grounded.
- (d) The secondary circuits of all instrument transformers shall be grounded.
- (e) The secondary circuits of all transformers, 150 volts or less, shall be grounded, except where used in connection with grounded direct current systems.
- (f) All three wire (not 3 phase) secondary circuits shall be grounded at the neutral point except that multiphase circuits shall be grounded either at the neutral point or the middle point of one phase (selecting usually that phase used for lighting, if any).
- (g) Ground connections shall not be made to the same artificial ground as that to which lightning arresters are grounded.
- (h) Ground wires shall be arranged without automatic cutouts interrupting their continuity, unless the operation of such a cutout automatically results in the immediate disconnection of the equipment or circuit, grounded by such wire, from all sources of electrical energy.
- (i) No ground wire for grounding non-current carrying parts shall be smaller than No. 6 B. & S.
- (j) For grounding, the ground wires shall have a combined cross section sufficient to insure the continuity of the ground connection under conditions of excess current caused by accidental grounding of any normal undergrounded conductor of the circuit, but in no case shall the individual ground wire be smaller than No. 6 B. & S.

Generators

- (a) Generators shall each be provided with a name-plate, giving the maker's name, the capacity in kilovolt amperes or kilowatts, the

- volts and amperes and the normal speed in revolutions per minute.
- (b) Generators shall be grounded in accordance with the rules for grounding.
 - (c) Terminal blocks when used on generators shall be made of non-combustible, non-absorptive, insulating material, such as slate, marble or porcelain.
 - (d) The use of soft rubber bushings to protect the lead wires coming through the frames of generators is permitted, except when installed where oils, grease, oily vapors or other substances known to have rapid deleterious effect on rubber are present in such quantities and in such proximity to generators as may cause such bushing to be liable to rapid destruction. In such cases hard wood, properly filled, porcelain, micanite bushings or their equivalent shall be used.

Motors

- (a) Motors shall each be provided with a name-plate, giving the maker's name, the capacity in volts and amperes, and the normal speed in revolutions per minute.
- (b) Motors shall be grounded in accordance with the rules for grounding.
- (c) Adjustable speed motors, if controlled by means of field regulation, shall be so arranged and connected that they cannot be started under weakened field, except balancer sets on three wire systems, booster sets, transformer blower motors and storage battery room fan motors and other motors operating under similar conditions.
- (d) Terminal blocks, when used on motors, shall be made of non-combustible, non-absorptive, insulating material, such as slate, marble or porcelain.
- (e) The use of soft rubber bushings to protect the lead wires coming through the frames of motors is permitted except when installed where oils, grease, oily vapors or other substances known to have rapid deleterious effect on rubber are present in such quantities and in such proximity to motors as may cause such bushings to be liable to rapid destruction. In such cases hard wood, properly filled, porcelain, micanite bushings or their equivalent, shall be used.

Synchronous Converters

- (a) Synchronous converters shall each be provided with a name-plate, giving the maker's name, the capacity in kilowatts, the volts and amperes, and the normal speed in revolutions per minute.
- (b) Synchronous converters shall be grounded in accordance with the rules for grounding.
- (c) Synchronous converters shall each be equipped with a speed limit device, so designed as to prevent an excessive rise in speed. Reverse current relays will not be considered as fulfilling this requirement.
- (d) Synchronous converters shall have an overload protective device on the alternating current side.
- (e) Terminal blocks when used on synchronous converters must be made of non-combustible, non-absorptive, insulating material, such as slate, marble or porcelain.
- (f) The use of soft rubber bushings to protect the lead wires coming through the frames of synchronous converters is permitted, except when installed where oils, grease, oily vapors or other substances known to have rapid deleterious effect on rubber are present in such quantities and in such proximity to converters as may cause such bushings to be liable to rapid destruction. In such cases hard wood, properly filled, porcelain, micanite bushings or their equivalent, shall be used.

Transformers, Regulators and Auto-starters

- (a) Transformers, regulators, and auto-starters shall each be provided with a name-plate, giving the maker's name, the capacity, the transformation ratio, and the frequency for which they are designed.
- (b) Transformers, regulators and auto-starters shall be grounded in accordance with the rules for grounding.
- (c) The secondary circuits of constant current and current transformers shall be provided with means for short circuiting them, which can be readily connected while the primary is energized and which are so arranged as to permit the removal of any instrument or other device in such circuits without opening the secondary.

Storage Batteries

- (a) Storage batteries above 50 K.w.h. at the 8 hr. rate of discharge, or above 150 volts to ground, shall be placed in a room by themselves.
- (b) Rooms containing storage batteries shall be so ventilated as to remove to the free air, as far as practicable, acid spray, so as to prevent dangerous accumulation of gas.
- (c) Cells shall be mounted on non-absorptive, non-combustible insulators, such as glass or thoroughly vitrified and glazed porcelain. Edison storage cells are excepted.
- (d) Suitable drainage shall be provided to prevent the accumulation of electrolyte in case of leakage or spraying.
- (e) Storage battery rooms, if lighted by inside lamps, shall have only incandescent electric lamps in keyless porcelain or composition sockets, controlled from points outside the battery room.

Switches

- (a) All switches shall be arranged or marked sufficiently to identify the equipment controlled by them, and to indicate whether they are open or closed.
- (b) Switches so arranged as to be liable to closure by gravity shall be provided with a latch or stop block to prevent accidental closure.
- (c) Disconnecting knife switches on circuits of 3000 volts or over in generating stations (excepting potential transformer disconnecting switches) shall be provided with latches for holding the switch in the closed position.
- (d) All switches interrupting, under load, circuits over 750 volts shall be provided with casings protecting the operator from danger of contact with current carrying parts unless isolated by elevation.
- (e) Exposed non-current carrying metal parts of switches shall be grounded in accordance with rules for grounding.

Switchboards and Compartments

- (a) Switchboards and compartments shall be grounded in accordance with the rules for grounding.
- (b) Switchboards shall be made of a non-combustible, non-absorptive material.
- (c) All switches shall be plainly marked or labeled, so as to afford ready means for identification.
- (d) No switchboard shall have exposed on its face any current carrying part at a voltage over 750 volts to ground.
- (e) All current carrying parts at a voltage of 2500 or over on switchboards shall be properly covered with insulated material or where this is impracticable, they shall be enclosed in compartments.
- (f) There shall be a clear working space of two feet or more at all points behind switchboards and compartments, and there shall be at least two means of egress from their rear where practicable.

- (g) All switchboards carrying exposed conductors or live parts at a voltage of 750 or more shall be protected by suitable enclosures or barriers and (unless constantly attended during operation) shall be made inaccessible to other than authorized persons.
- (h) The use of electro-static devices on switchboards equipped with any other apparatus, instrument or device is prohibited unless properly protected.

Lightning Arresters

- (a) Lightning arresters shall be attached to each wire of every overhead circuit entering a station, except wires in cables with grounded lead sheaths, or cables when supported by grounded messenger wires, and such connections shall be made as near as practicable to the point of entrance.
- (b) Lightning arresters shall be connected to a thoroughly good and permanent ground connection by metallic strip or wires having a conductivity not less than that of No. 6 B & S copper wire.
- (c) Ground wires for lightning arresters shall not be encased in iron pipe unless electrically connected to both ends of such pipe.
- (d) Lightning arresters shall not be connected to artificial grounds used for other apparatus.
- (e) Lightning arresters on circuits over 750 volts shall be so arranged, isolated and equipped that they may be readily disconnected from conductors to which they are connected by air break manual disconnectors, having air gaps of not less than four times the equivalent needle point sparking distance of the voltage for which the arresters are set, and never less than eight inches.
- (f) All non-current carrying metal parts of lightning arresters on circuits of 750 volts or over shall be either grounded or guarded.

Circuits, Conduits and Conductors

- (a) Secondary circuits and conduits shall be grounded in accordance with the rules for grounding.
- (b) The installation of high tension and low tension conductors in a common duct shall be avoided.
- (c) Metal encased alternating current multiple conductor cable operating at voltages of 2000 volts or over shall be equipped with end bells at the termination of the metal sheath. Up to 3000 volts and for the cables used in series lighting work the belling out of the load sheath of the cable will be considered the equivalent of an end bell.
- (d) Circuits, conduits, conductors, fixtures and other appurtenances used for the lighting of generating stations and substations shall comply with the rules of the National Electrical Code, National Board of Fire Underwriters, except that rules limiting the wattage of circuits shall not apply, and in all cases where the rules read "550 volts," it shall be understood that "750 volts" is to be substituted.

The rules of the National Electrical Code, National Board of Fire Underwriters, shall apply to the electrical equipment in all buildings used exclusively for Company purposes; excepting generating stations and substations, with the following exceptions:

Where the rules read "550 volts" it shall be understood that "750 volts" is to be substituted; rules limiting the wattage shall not apply to circuits fed from railway circuits of 750 volts or under; rules limiting the overload setting of circuit-breaking shall not apply to those on railway circuits of 750 volts or under.

The types of all service switches and controlling devices and meters and their attached controlling devices and testing devices owned or leased and operated by, or for the exclusive benefit of, persons or corporations subject

to the jurisdiction of this Commission shall be as approved by the Public Service Commission.

The Resolutions of November 6, 1916, approved the installation of certain electrical equipment in the Administration Building of the New York Consolidated Railroad Company at its Fresh Pond Road Station on the Ridgewood Line, and certain new lighting circuits and lights in the building of the New York Central Railroad Company at No. 352 Mott Avenue, New York City, installed by The New York Edison Company.

Hearings closed April 3, 1916.

Arthur DuBois, for the Commission.

A. M. Williams, for The Brooklyn Heights Railroad Company, Nassau Electric Railroad Company, Brooklyn, Queens County and Suburban Railroad Company, South Brooklyn Railway Company, Coney Island and Gravesend Railway Company, Bridge Operating Company, New York Consolidated Railroad Company and New York Municipal Railway Corporation.

Wm. Lieb, Jr., for The New York Edison Company.

James L. Quackenbush, by *Arthur G. Peacock*, for Interborough Rapid Transit Company, New York Railways Company, New York and Queens County Railway Company, Long Island Electric Railway Company and The New York and Long Island Traction Company.

Mr. Thomas, for the New York and Queens County Railway Company.

E. B. Katte, for The New York Central Railroad Company.

Walter F. Wells and *G. L. Knight*, for The Edison Electric Illuminating Company of Brooklyn.

Cullen & Dykman, by *J. A. Dykman*, for The Brooklyn Union Gas Company, The Flatbush Gas Company, The Jamaica Gas Light Company, Richmond Hill and Queens County Gas Light Company and The Newtown Gas Company.

Carlton Macy, for the Queens Borough Gas and Electric Company.

Shearman & Sterling, by *P. F. W. Ruther*, for the New York and Queens Electric Light and Power Company.

In the Matter of the Hearing on Motion of the Commission on the Question of Improvements and Changes in the Regulations, Practices, Equipment, Appliances and Service of the INTERBOROUGH RAPID TRANSIT COMPANY at the 149th Street Station on its Third Avenue Elevated Line and at the 149th Street Station on its Lenox Avenue Subway Line.

CASE NO. 2081: ORDER ENTERED APRIL 13, 1916

STATION FACILITIES—ELEVATED RAILROADS—MEZZANINE AND STAIRWAY AT THIRD AVENUE AND 149TH STREET REQUIRED.—The Order required the Interborough Rapid Transit Company to construct at the 149th Street station of

the Third Avenue Elevated Line of the Interborough Rapid Transit Company a new temporary mezzanine with temporary stairways for exit from the north and southbound platforms in accordance with a plan entitled "Interborough Rapid Transit Company Manhattan Railway Division Suburban Line 149th Street station Proposed Temporary Mezzanine Station Span 161 Contract Drawing No. 6288" dated April 6, 1916, and filed as Exhibit No. 9 in the Case herein. The work was to be completed by May 6, 1916, and if it proved satisfactory to the Commission then the construction was to be made permanent.

Hearings closed April 7, 1916.

E. J. Crummey, for the Commission.

James L. Quackenbush, by *Arthur G. Peacock*, for the Interborough Rapid Transit Co.

Olin J. Stephens and *Alex. Haring* for the Bronx Board of Trade.

Julius Haas, property owner, in person.

In the Matter of the Application of THE JAY STREET CONNECTING RAILROAD for Permission to Construct and Operate its Road under Section 53 of the Public Service Commissions Law.

CASE NO. 2084: ORDERS ENTERED APRIL 13, AND MAY 25, 1916

FRANCHISES AND PRIVILEGES—RAILROAD CORPORATIONS—EXERCISE OF FRANCHISE APPROVED.—The Order of April 13, 1916, approved the exercise of a franchise granted by the Board of Estimate and Apportionment of the City of New York, by contract dated November 15, 1915, to The Jay Street Connecting Railroad, a predecessor of the applicant of the same name, for the following route:

A. One track beginning at a point on the easterly side line of Jay street about fifty-eight (58) feet northerly from the northerly side line of John street; thence southwesterly for a distance of about one hundred and thirty (130) feet to a point on the southerly side line of John street situated about twenty (20) feet eight (8) inches westerly from the westerly side line of Jay street.

Also two spurs or turnouts from said Track A, as follows:

(1) One spur or turnout beginning at a point in Track A situated about seventy (70) feet from the southerly side line of John street, measured along the centre line of Track A; thence southwesterly on a curve whose radius is one hundred and fifty (150) feet for a distance of fifty-three (53) feet to a point in John street; thence continuing in a straight line a distance of about thirty-nine (39) feet to a point in the southerly side line of John street, which point is about fifty (50) feet six (6) inches from the westerly side line of Jay street.

(2) One spur or turnout beginning at a point in the centre line of Track A situated about fifty-five (55) feet from the southerly side line of John street, measured along the centre line of Track A; thence southwesterly on a curve whose radius is one hundred and fifty (150) feet for a distance of fifty-five (55) feet

to a point on the southerly side line of John street situated about ten (10) feet six (6) inches from the westerly side line of Jay street.

B. Beginning at a point in Main Track A about eighty-five (85) feet from the southerly side of John street measured along the centre of main Track A; thence southwesterly along Jay street to John street; thence westerly along John street to Adams street; thence southerly along Adams street and southwesterly across lands of The City of New York, lying under the Manhattan bridge to Plymouth street; thence westerly along Plymouth street to the westerly line of Main street.

C. Beginning at a point in main Track A in Jay street, between John street and the existing bulkhead at the foot of Jay street and the East River; thence southerly along Jay street to Plymouth street; thence easterly along Plymouth street to the westerly side of Bridge street.

D. Beginning at a point in the line of Extension B hereinabove described on Plymouth street at or about the centre line of the driveway on the westerly side of the Plaza under the Manhattan bridge; running thence easterly along Plymouth street beyond the centre line of Adams street; thence curving southeasterly along the driveway on the easterly side of the Plaza under the Manhattan bridge to Water street and thence easterly along Water street to the westerly side of Bridge street.

E. Beginning at a point in the westerly side of Main street at or near its intersection with the southerly side of Plymouth street; thence southerly along Main street to the northerly side of Water street.

1. One (1) connection to the Arbuckle Sugar Refinery on the northerly side of John street about two hundred and sixteen (216) feet westerly from the westerly side of Jay street.

2. One (1) connection to the building of E. W. Bliss Company on the easterly side of Adams street, about one hundred and fifteen (115) feet northerly from the northerly side of Plymouth street.

3. One (1) connection to the building of Robert Gair Company on the easterly side of Main street about ten (10) feet southerly from the southerly side of Plymouth street.

4. Two (2) connections to the proposed Jay Street Terminal from the easterly side of Main street, and crossing Main street to the aforesaid terminal.

5. One (1) connection to the building of John W. Masury & Son on the southerly side of Plymouth street about ten (10) feet westerly from the westerly side of Jay Street.

6. One (1) connection to the building of E. W. Bliss Company on the southerly side of Plymouth street about two hundred (200) feet easterly from the easterly side of Jay street.

7. One (1) connection to the property of Kirkman & Son on the southeasterly corner of Plymouth and Bridge streets about sixteen (16) feet southerly from the southerly side of Plymouth street.

8. One (1) connection to the building of the Grand Union Tea Company on the easterly side of Pearl street about twenty-three (23) feet southerly from the southerly side of Water street.

9. Two (2) connections to a vacant lot owned by Kirkman & Son on the northeasterly corner of Bridge street and Water street.

10. One (1) connection to the building of E. W. Bliss Company on the driveway on the easterly side of the Plaza under the Manhattan bridge, about twenty-four (24) feet southerly from the southerly side of Plymouth street.

11. One (1) connection to the building of Robert Gair Com-

pany on the easterly side of Main street about twenty-eight (28) feet southerly from the southerly side of Plymouth street.

12. One (1) connection to the building of Robert Gair Company on the southerly side of Water street about seventy-two (72) feet easterly from the easterly side of Main street, and to cross such other streets and avenues, named and unnamed, as may be encountered in said routes.

The Order entered May 25, 1916, approved the exercise of the franchise above described as amended in some particulars by the Board of Estimate and Apportionment of the City of New York, by a franchise granted May 17, 1916, as shown by a map accompanying the petition of The Jay Street Connecting Railroad to the Board of Estimate and Apportionment, dated April 28, 1916.

Hearings closed April 10, 1916.

H. M. Chamberlain, for the Commission;

Arthur E. Goddard, for the applicant company;

Lamar Hardy, by *William J. Clarke*, for the City of New York.

In the Matter of the Hearing on Motion of the Commission to Determine Whether an Order Should be Made Requiring NEW YORK CONSOLIDATED RAILROAD COMPANY to Improve the Service on its Broadway Ferry Shuttle Line.

CASE NO. 1967: ORDERS ENTERED APRIL 20, MAY 18 AND JUNE 1, 1916

SERVICE—ELEVATED RAILROADS—OPERATION OF BROADWAY SHUTTLE ELEVATED LINE SUSPENDED.—The Order of April 20, 1916, denied the application of the New York Consolidated Railroad Company for a modification of the Order entered herein on October 27, 1915, as amended, so as to permit the operation of through service to Broadway Ferry on a seven and one-half minute headway. The Order of May 18, 1916, authorized the Company to suspend until September 1, 1916, the operation of cars on its Broadway Ferry Shuttle Elevated Line on condition of putting into effect an exchange of transfers between the Broadway Elevated Line at Marcy Avenue Station and the surface cars operating to Broadway Ferry. The Order of June 1, 1916, rescinded the Order of May 18, 1916, and authorized the Company to suspend operation of the Broadway Ferry Shuttle Elevated Line (without time limitation) upon the same condition as that contained in the order of May 18, 1916.

(For the Order of October 27, 1915, as amended, see 6 P. S. C. R. [1st Dist. N. Y.] 440).

In the Matter of the Form of Annual Report to be Filed by THE NEW YORK STEAM COMPANY.

CASE NO. 2088: ORDER ENTERED APRIL 20, 1916

REPORTS—STEAM CORPORATIONS—FORM OF ANNUAL REPORT PRESCRIBED.—The Order required The New York Steam Company to file its annual report for the year ending April 30, 1916, in the form prescribed for gas and electrical corporations and designated as "Annual Report Form A (Serial Form R. 82)" in so far as applicable. It was provided, however, that the itemization of fixed capital, operating revenues and operating expenses should be made in accordance with the classification used in the Company's books of account so far as consistent with the balance sheet and income statement provided in the form prescribed.

In the Matter of the Hearing on the Complaint of MRS. HERBERT M. HOLTON *against* WESTCHESTER LIGHTING COMPANY, as to Alleged Refusal to Furnish Service.

CASE NO. 1951: ORDER ENTERED APRIL 27, 1916

SERVICE—ELECTRICAL CORPORATIONS—REFUSAL TO FURNISH SERVICE—COMPLAINT DISMISSED.—The Order dismissed the complaint herein, upon the satisfaction thereof by the Westchester Lighting Company.

Hearings closed May 5, 1915.

Edward M. Deegan, for the Commission.

Herbert M. Holton and *Mrs. Anna Holton*, complainants, in person.

Samuel J. Rosensohn, for the City of New York.

Shearman & Sterling, by *P. F. W. Ruther*, for Westchester Lighting Company.

In the Matter of the Hearing on Motion of the Commission Regarding Complaint of COMMERCIAL BOARD OF BELLAIRE AND QUEENS, INC., *against* the LONG ISLAND ELECTRIC RAILWAY COMPANY, THE NEW YORK AND LONG ISLAND TRACTION COMPANY and the NEW YORK & QUEENS COUNTY RAILWAY COMPANY—Waiting Room Facilities at Washington and Fulton Streets, Jamaica.

CASE NO. 1961: ORDER ENTERED APRIL 27, 1916

STATION FACILITIES—STREET RAILROAD CORPORATIONS—WAITING ROOM AT JAMAICA—PROCEEDING DISCONTINUED.—The Order discontinued the proceeding herein without prejudice upon the commencement by the Commission of a proceeding covering the same subject matter.

Hearings closed June 9, 1915.

Edward J. Crummey, for the Commission.

James L. Quackenbush, by *Arthur G. Peacock* for the Long Island Electric Railway Co., The New York and Long Island Traction Co. and the New York and Queens County Railway Company.

George R. Hilty, for the Commercial Board of Bellaire and Queens.

William L. Savacool, for the Jamaica Citizens Association.

Joseph Wise, for the Hollis Civic Association.

In the Matter of the Hearing on the Motion of the Commission on the Question of the Adequacy of the Facilities Afforded by the INTERBOROUGH RAPID TRANSIT COMPANY at the 143d Street, 156th Street, 161st Street, 166th Street, 169th Street and Claremont Parkway Stations on its Third Avenue Elevated Line.

CASE NO. 1966: RESOLUTION ADOPTED APRIL 27, 1916

STAIRS AND STAIRWAYS—ELEVATED RAILROADS—ADDITIONAL STAIRWAY AT THIRD AVENUE AND 143RD STREET—APPROVAL OF WORK.—The Resolution approved the work of construction of a new stairway on the Third Avenue elevated line of the Interborough Rapid Transit Company at the 143rd Street station, pursuant to an Order entered on June 18, 1915, in Case No. 1966 (Reported at 6 P. S. C. R. [1st Dist. N. Y.] 411.)

In the Matter of the Hearing on the Motion of the Commission to Determine Whether an Order Should be Made Requiring the INTERBOROUGH RAPID TRANSIT COMPANY to Construct, Erect and Provide for Use a New Station at or near the Intersection of 150th Street and Eighth Avenue on said Company's Ninth Avenue Elevated Line.

CASE NO. 2003: ORDERS ENTERED MAY 4, JUNE 15 AND JULY 27, 1916

STATIONS—ELEVATED RAILROADS—ADDITIONAL STATION AT 150TH STREET—PREVIOUS ORDER AMENDED.—The three Orders entered herein during the year 1916 amended an Order entered on November 23, 1915, directing the Interborough Rapid Transit Company to construct a new local station at 150th Street and Eighth Avenue on the Company's Sixth and Ninth Avenue elevated lines. The Order as finally amended required the new local station to center approximately at 151st Street and Eighth Avenue, the submission of plans for the approval of the Commission and the completion of the work by March 1, 1917.

(For the Order of November 23, 1915, see 6 P. S. C. R. [1st Dist. N. Y.] 452.)

Hearing closed April 26, 1916.

Edward M. Deegan, for the Commission.

James L. Quackenbush, by *Arthur G. Peacock*, for the Interborough Rapid Transit Co.

Joseph Rosenzweig, for citizens in the neighborhood of 150th Street and Eighth Avenue.

Harry Goodstein, for the Upper Manhattan Property Owners' Association and for property owners in vicinity of station.

Morris Neuman, in person.

Charles Went, property owner, in person.

Dan Lynch, in person.

A. J. Phelan, in person.

In the Matter of the Hearing on the Motion of the Commission Concerning the Facilities Provided by THE LONG ISLAND RAILROAD COMPANY at its Brooklyn Manor Station; also Concerning the Rush Hour Service Provided by said Company between said Brooklyn Manor Station and the Pennsylvania Terminal.

CASE NO. 2070: ORDER ENTERED MAY 4, 1916

STATIONS AND STATION FACILITIES—RAILROAD CORPORATIONS—IMPROVEMENTS AT BROOKLYN MANOR STATION REQUIRED.—The Order required The Long Island Railroad Company to make certain improvements at the Brooklyn Manor Station of the Rockaway Beach Division, as shown upon the blue print plans transmitted to the Commission by Mr. C. L. Addison, Assistant to the President of the Company, entitled "L. I. R. R. Co. Rockaway Beach Division, Brooklyn Manor Proposed Changes", and designated, numbered and dated as follows: "Drawing No. 01889, Sheet No. 1, dated April 21, 1916; Drawing No. 01889, Sheet No. 2, dated April 24, 1916; Drawing No. 01889, Sheet No. 3, dated April 24, 1916." The improvements were to be completed by July 1, 1916.

Hearings closed March 13, 1916.

E. M. Deegan, for the Commission.

C. L. Addison, for The Long Island Railroad Company.

Thomas F. F. Lee and *Anthony Moors* for the Homestead Civic Association, the West End Civic Association and the Forest Park Civic Association.

George A. De Vestern, for the Brooklyn Homes Civic Association.

In the Matter of the Application of THE NEW YORK CONNECTING

RAILROAD COMPANY for the Approval by the Public Service Commission for the First District of the Issuance by said Company of \$8,000,000 of 4½ per cent. First Mortgage Gold Bonds, Series "A", to be dated August 1, 1913.

CASE No. 2083: ORDER ENTERED MAY 4, 1916. RESOLUTIONS
ADOPTED SEPTEMBER 21 AND OCTOBER 26, 1916

BOND ISSUE—RAILROAD CORPORATIONS—PURPOSES OF BOND ISSUE—AMORTIZATION OF DISCOUNTS—APPROVAL OF EXPENDITURES.—The Order authorized the Company to issue \$8,000,000 4½ per cent series "A" first mortgage gold bonds dated August 1, 1913 maturing August 1, 1953, to be sold so as to net the Company not less than 94 per cent of par, and to be applied to the following purposes: (1) Capital expenditures approved by the Commission upon a statement submitted by the Company aggregating \$1,807,597.54 less amount of proceeds of bonds authorized in Case No. 1810 in the sum of \$106,677.48, leaving a net amount of \$1,700,920.06, of which \$1,162,000 was to be paid to the Pennsylvania Railroad Company for moneys advanced for capital purposes up to February 29, 1916; (2) acquisition of property or construction, etc., \$5,819,079.94; (3) discount on bonds and expenses of sale thereof, \$480,000. The Company was required to amortize the sum of \$480,000, representing the discount on bonds and the expenses of the sale thereof, by making annual payments of \$1,100 into an amortization fund established for said purposes, to make monthly reports to the Commission of the receipt and application of the proceeds of the sale of bonds and to submit itemized bills for the approval of the Commission before making any expenditures hereunder. The authority granted was to apply only to bonds issued on or before June 30, 1916.

A Resolution of September 21, 1916, authorized the Company to withdraw cash in the amount of \$874,590.91 from the proceeds of the sale of bonds authorized herein and to apply the same to cover expenditures for capital purposes incurred during the months of March, April and May, 1916, and \$615,000 of said amount was to be repaid to the Pennsylvania Railroad Company for moneys advanced by the latter. A second Resolution of the same day in similar terms approved the expenditure of \$394,007.84, and a third Resolution adopted October 26, 1916, similarly approved the expenditure of \$642,657.27.

Hearings closed April 24, 1916.

O. C. Semple, for the Commission.

O'Brien, Boardman & Platt, by *Albert B. Boardman*, for the applicant company.

In the Matter of the Hearing on Motion of the Commission as to
Station Facilities at Woodhaven Junction on the Lines of
THE LONG ISLAND RAILROAD COMPANY.

CASE No. 2080: ORDER ENTERED MAY 11, 1916

STATION FACILITIES—RAILROAD CORPORATIONS—IMPROVEMENTS AT WOODHAVEN JUNCTION STATION OF L. I. R. R. REQUIRED.—The Order required The Long Island Railroad Company (1) to enclose the waiting shed at the northbound Rockaway Beach Division platform and properly heat the same in cold weather; (2) to construct suitable canopy not less than three car lengths on the eastbound Atlantic Division station platform and to construct a suitable canopy over the stairway leading from said platform to the southbound platform of the Rockaway Beach Division, to be completed not later than July 1, 1916; (3) to construct a suitable platform connecting the east end of the eastbound Atlantic Division platform with the stairs leading to the northbound platform of the Rockaway Beach Division, the work to be completed not later than June 1, 1916; (4) to make such changes in the stairway leading from the Rockaway Beach Division to Atlantic Avenue that passengers descending the stairway may reach Atlantic Avenue east of the tracks of the Rockaway Beach Division as well as by the present exit to Atlantic Avenue west of said tracks, the work to be completed not later than June 1, 1916.

Hearings closed May 1, 1916.

Arthur DuBois, for the Commission.

C. L. Addison, for The Long Island Railroad Co.

In the Matter of the Hearing on the Motion of the Commission
Concerning the Motive Power, Equipment, Facilities and
Service of the NEW YORK RAILWAYS COMPANY on its
Madison Street and Avenue C Lines.

CASE No. 2058: ORDERS ENTERED MAY 15 AND NOVEMBER
16, 1916

MOTIVE POWER—STREET RAILROAD CORPORATIONS—CHANGE OF MOTIVE POWER FROM HORSE TO ELECTRICITY.—The Order of May 15, 1916, as amended November 16, 1916, required the New York Railways Company to discontinue on or before March 15, 1917, operation by horse power on the Madison Street and Avenue C lines, to immediately contract for the purchase of 70 new cars to be operated by some power other than animal power or locomotive steam power and to put them in operation on said lines as fast as delivered and to place all such cars in service not later than April 1, 1917.

Hearings closed May 11, 1916.

H. M. Chamberlain, for the Commission.

James L. Quackenbush, by *Arthur G. Peacock*, for the New York Railways Co.

In the Matter of the Application of UNION RAILWAY COMPANY OF
NEW YORK CITY for the Permission and Approval of the Pub-

lic Service Commission for the First District, Pursuant to the Provisions of Section 53 of the Public Service Commissions Law for the Construction of Extensions of its Street Surface Railway and the Exercise of the Franchise to Operate the same in the Boroughs of Manhattan and The Bronx, City of New York; also for the approval of certain agreements for the use of the tracks of the THIRD AVENUE RAILWAY COMPANY and THE FORTY-SECOND STREET, MANHATTANVILLE AND ST. NICHOLAS AVENUE RAILWAY COMPANY, and for exemption from the Obligation to Exchange Transfers with said Companies.—136th Street Extension, Willis Avenue Bridge and 125th Street Extensions.

CASE NO. 2021: ORDER ENTERED MAY 16, 1916

FRANCHISES AND PRIVILEGES—STREET RAILROAD CORPORATIONS—EXERCISE OF FRANCHISE APPROVED.—The Order approved the exercise of a franchise granted to the Union Railway Company of New York City by the Board of Estimate and Apportionment of the City of New York by contract dated September 9, 1915, as amended April 3, 1916, for the following routes:

Beginning at and connecting with the existing tracks of the company in Lincoln avenue; thence westerly by double track in, upon and along East 136th street to and connecting with the existing tracks of the company in Third avenue, Borough of The Bronx.

Beginning at and connecting with the existing tracks of the company in Willis avenue, at or near the northerly side of East 134th street, Borough of The Bronx; thence southerly by double track in, upon and along Willis avenue and upon and over the Willis Avenue bridge and its approaches, to East 125th street, Borough of Manhattan; thence by double track westerly in, upon and along said East 125th street and West 125th street to Manhattan street; thence by double track westerly in, upon and along said Manhattan street to West 129th street; thence westerly by single track in, upon and along said Manhattan street to 12th avenue; thence southerly by double track in, upon and along said 12th avenue to West 129th street; thence easterly by single track in, upon and along said West 129th street to Manhattan street, and there connecting with the existing east bound track in said Manhattan street.

Beginning at and connecting with the above described tracks on the Willis Avenue bridge at the intersection of the northerly and easterly approaches to said bridge; thence easterly and northerly by double track upon and over said easterly approach to and connecting with the existing tracks in Southern Boulevard, Borough of The Bronx.

Hearings closed May 15, 1916.

H. M. Chamberlain, for the Commission.

Shelton E. Martin, for Union Railway Company of New York City.

H. G. Schneider, for the West Side Children's Playground and Recreation

Conference of Taxpayers and Residents of Manhattan and The Bronx.
Lamar Hardy, by *W. J. Clarke*, for the City of New York.

In the Matter of the Application of THE BROOKLYN HEIGHTS RAILROAD COMPANY, lessee of THE BROOKLYN CITY RAILROAD COMPANY, for the Permission and Approval of the Commission Pursuant to the Provisions of Section 53 of the Public Service Commissions Law, for the Construction of an Extension and the Exercise of the Franchise to Operate the same upon and along Fresh Pond Road from the Lutheran Cemetery Line to Myrtle Avenue in the Borough of Queens, City of New York.

CASE NO. 2090: ORDER ENTERED MAY 16, 1916

FRANCHISES AND PRIVILEGES—STREET RAILROAD CORPORATIONS—EXERCISE OF FRANCHISE APPROVED.—The order approved the exercise of a franchise for an extension granted by the Board of Estimate and Apportionment of the City of New York on the following route:

Beginning at and connecting with the existing tracks of The Brooklyn City Railroad Company in Fresh Pond road at or near the intersection of said tracks with the tracks of the so-called Lutheran Cemetery line of said The Brooklyn City Railroad Company; thence in, upon and along Fresh Pond road to and connecting with the existing tracks of The Brooklyn City Railroad Company in Myrtle Avenue.

And to cross such other streets and avenues, named, and unnamed, as may be encountered in said route.

Hearings closed May 15, 1916.

Edward M. Deegan, for the Commission;

A. M. Williams, for the applicant company;

Lamar Hardy, by *William J. Clarke*, for the City of New York.

In the Matter of the Application of BROOKLYN, QUEENS COUNTY AND SUBURBAN RAILROAD COMPANY for the Permission and Approval of the Commission Pursuant to the Provisions of Section 53 of the Public Service Commissions Law for the Construction of an Extension and the Exercise of the Franchise to Operate the same upon and along Metropolitan Avenue from Dry Harbor Road to Jamaica Plank Road in the Borough of Queens, City of New York.

CASE NO. 2091: ORDER ENTERED MAY 16, 1916

FRANCHISES AND PRIVILEGES—STREET RAILROAD CORPORATIONS—EXERCISE OF FRANCHISE APPROVED.—The order approved the exercise of a franchise for an extension granted by the Board of Estimate and Apportionment of the City of New York, on the following route:

Beginning at and connecting with the existing tracks of the company in Metropolitan avenue at or near its intersection with Dry Harbor road; thence easterly in and upon Metropolitan avenue to its intersection with Jamaica Plank road in the former village of Jamaica, and there connecting with the existing tracks of the company in said Jamaica Plank road.

And to cross such other streets and avenues, named and unnamed, as may be encountered in said route.

Hearings closed May 15, 1916.

Edward M. Deegan, for the Commission;

A. M. Williams, for the applicant company;

John Adikes, for the Jamaica Citizens Association;

R. W. Higbie, for Jamaica Chamber of Commerce;

Lamar Hardy, by *William J. Clarke*, for the City of New York.

In the Matter of the Application of the NASSAU ELECTRIC RAILROAD COMPANY for the Permission and Approval of the Commission Pursuant to the Provisions of Section 53 of the Public Service Commissions Law for the Construction of an Extension and the Exercise of the Franchise to Operate the same upon and along Eighth Avenue from 39th Street to Bay Ridge Avenue, Borough of Brooklyn, City of New York.

CASE NO. 2092: ORDER ENTERED MAY 16, 1916

FRANCHISES AND PRIVILEGES—STREET RAILROAD CORPORATIONS—EXERCISE OF FRANCHISE APPROVED.—The Order approved the exercise of the franchise granted by the Board of Estimate and Apportionment of the City of New York to The Nassau Electric Railroad Company, by a contract dated April 3, 1916, for the following route:

"Beginning at and connecting with the existing tracks of the Company on 39th street at Eighth avenue; extending thence westerly upon and along Eighth avenue to Bay Ridge avenue and there connecting with the existing tracks of the Brooklyn City Railroad Company in Bay Ridge avenue."

Hearings closed May 15, 1916.

Edward M. Deegan, for the Commission.

A. M. Williams, for the applicant company;

Lamar Hardy, by *Judson Hyatt*, for the City of New York.

In the Matter of the Hearing on the Motion of the Commission
Concerning the Service of the NEW YORK AND QUEENS
COUNTY RAILWAY COMPANY.

CASE No. 2086: ORDER ENTERED MAY 18, 1916

SERVICE—STREET RAILROAD CORPORATIONS—SCHEDULE OF OPERATION REQUIRED.—The Order required the New York and Queens County Railway Company to establish a schedule of operation as follows:

SCHEDULE ON CALVARY LINE

Westbound service to New York past Borden and Vernon Avenues. A.M.	No. of cars.	Eastbound service past Borden and Vernon Avenues. P.M.	No. of cars.
6:00 to 6:30	4	3:00 to 3:30	3
6:30 to 7:00	4	3:30 to 4:00	3
7:00 to 7:30	4	4:00 to 4:30	3
7:30 to 8:00	4	4:30 to 5:00	4
8:00 to 8:30	4	5:00 to 5:30	4
8:30 to 9:00	4	5:30 to 6:00	4
9:00 to 9:30	3	6:00 to 6:30	4
9:30 to 10:00	3	6:30 to 7:00	3
10:00 to 10:30	3	7:00 to 7:30	3
10:30 to 11:00	3	7:30 to 8:00	3
11:00 to 11:30	3	8:00 to 8:30	3
11:30 to 12:00 Noon	3	8:30 to 9:00	3
P.M.		9:00 to 9:30	2
12:00 to 12:30	3	9:30 to 10:00	2
12:30 to 1:00	3	10:00 to 10:30	1
1:00 to 1:30	3	10:30 to 11:00	2
1:30 to 2:00	3	11:00 to 11:30	1
2:00 to 2:30	3	11:30 to 12:00	2
2:30 to 3:00	3		

SCHEDULE ON RAVENSWOOD LINE

Westbound service to New York past 6th St. and Vernon Avenue. A.M.	No. of cars.	Eastbound service past Sixth Street and Vernon Avenue. P.M.	No. of cars.
6:00 to 6:30	3	3:00 to 3:30	2
6:30 to 7:00	3	3:30 to 4:00	2
7:00 to 7:30	3	4:00 to 4:30	2
7:30 to 8:00	3	4:30 to 5:00	3
8:00 to 8:30	3	5:00 to 5:30	3
8:30 to 9:00	2	5:30 to 6:00	3
9:00 to 9:30	2	6:00 to 6:30	3
9:30 to 10:00	2	6:30 to 7:00	2
10:00 to 10:30	2	7:00 to 7:30	2
10:30 to 11:00	2	7:30 to 8:00	2
11:00 to 11:30	2	8:00 to 8:30	2
11:30 to 12:00 Noon	2	8:30 to 9:00	1
P.M.		9:00 to 9:30	2
12:00 to 12:30	2	9:30 to 10:00	1

SCHEDULE ON RAVENSWOOD LINE—Continued:

Westbound service to New York past Borden and Vernon Avenues. A.M.	No. of cars.	Eastbound service past Borden and Vernon Avenues. P.M.	No. of cars.
12:30 to 1:00	2	10:00 to 10:30	2
1:00 to 1:30	2	10:30 to 11:00	1
1:30 to 2:00	2	11:00 to 11:30	2
2:00 to 2:30	2	11:30 to 12:00	1
2:30 to 3:00	2		

SCHEDULE ON FLUSHING-JAMAICA LINE

Westbound service to New York past San- ford and Bowne Avenues. A.M.	No. of cars.	Service eastbound past Sanford and Bowne Avenues. P.M.	No. of cars.
6:00 to 6:30	3	3:00 to 3:30	3
6:30 to 7:00	3	3:30 to 4:00	3
7:00 to 7:30	3	4:00 to 4:30	3
7:30 to 8:00	3	4:30 to 5:00	3
8:00 to 8:30	3	5:00 to 5:30	3
8:30 to 9:00	3	5:30 to 6:00	3
9:00 to 9:30	3	6:00 to 6:30	3
9:30 to 10:00	3	6:30 to 7:00	3
10:00 to 10:30	3	7:00 to 7:30	3
10:30 to 11:00	3	7:30 to 8:00	3
11:00 to 11:30	3	8:00 to 8:30	2
11:30 to 12:00 Noon	3	8:30 to 9:00	2
P.M.		9:00 to 9:30	2
12:00 to 12:30	3	9:30 to 10:00	1
12:30 to 1:00	3	10:00 to 10:30	2
1:00 to 1:30	3	10:30 to 11:00	1
1:30 to 2:00	3	11:00 to 11:30	2
2:00 to 2:30	3	11:30 to 12:00	1
2:30 to 3:00	3		

SERVICE ON DUTCH KILLS LINE

Westbound service to New York passing Sec- ond and Jackson Avenues. A.M.	No. of cars.	Eastbound service passing Second and Jackson Avenues P.M.	No. of cars.
6:00 to 6:30	6	3:00 to 3:30	3
6:30 to 7:00	12	3:30 to 4:00	3
7:00 to 7:30	12	4:00 to 4:30	4
7:30 to 8:00	12	4:30 to 5:00	6
8:00 to 8:30	12	5:00 to 5:30	8
8:30 to 9:00	7	5:30 to 6:00	12
9:00 to 9:30	4	6:00 to 6:30	13
9:30 to 10:00	4	6:30 to 7:00	13
10:00 to 10:30	3	7:00 to 7:30	7
10:30 to 11:00	3	7:30 to 8:00	6
11:00 to 11:30	3	8:00 to 8:30	3
11:30 to 12:00 Noon	3	8:30 to 9:00	3
P.M.		9:00 to 9:30	3
12:00 to 12:30	3	9:30 to 10:00	3
12:30 to 1:00	3	10:00 to 10:30	3
1:00 to 1:30	3	10:30 to 11:00	3
1:30 to 2:00	3	11:00 to 11:30	4
2:00 to 2:30	3	11:30 to 12:00	3
2:30 to 3:00	3		

SCHEDULE ON FIFTY-FIRST STREET LINE

Operating between Fifty-first Street and Jackson
Avenue and 59th Street, New York

Westbound service to New York past Woodside Barns	No. of cars.	Eastbound service to 51st Street and Jackson Avenue past Woodside barns	No. of cars.
A.M.		P.M.	
6:30 to 7:00	5	5:00 to 5:30	2
7:00 to 7:30	5	5:30 to 6:00	6
7:30 to 8:00	5	6:00 to 6:30	6
8:00 to 8:30	5	6:30 to 7:00	5
8:30 to 9:00	3	7:00 to 7:30	4

SCHEDULE ON FLUSHING LINE.

Operating between Sanford and Parsons Avenue,
Flushing, and 59th Street, New York.

Westbound service to New York past Woodside Barns.	No. of cars.	Eastbound service to Flushing past Woodside Barns.	No. of cars.
A.M.		P.M.	
6:00 to 6:30	3	2:00 to 2:30	3
6:30 to 7:00	5	2:30 to 3:00	3
7:00 to 7:30	5	3:00 to 3:30	3
7:30 to 8:00	5	3:30 to 4:00	4
8:00 to 8:30	5	4:00 to 4:30	4
8:30 to 9:00	4	4:30 to 5:00	5
9:00 to 9:30	4	5:00 to 5:30	5
9:30 to 10:00	4	5:30 to 6:00	5
10:00 to 10:30	4	6:00 to 6:30	5
10:30 to 11:00	4	6:30 to 7:00	5
11:00 to 11:30	4	7:00 to 7:30	4
11:30 to 12:00 Noon	3	7:30 to 8:00	4
P.M.		8:00 to 8:30	3
12:00 to 12:30	3	8:30 to 9:00	3
12:30 to 1:00	3	9:00 to 9:30	3
1:00 to 1:30	3	9:30 to 10:00	3
1:30 to 2:00	3	10:00 to 10:30	3
2:00 to 2:30	3	10:30 to 11:00	3
2:30 to 3:00	3	11:00 to 11:30	2
		11:30 to 12:00	2

SCHEDULE ON FLUSHING BRIDGE LINE

Operating between Flushing Bridge and 59th Street, New York

Westbound service to New York past Woodside Barns	No. of cars.	Eastbound service to Flushing Bridge past Woodside Barns	No. of cars.
A.M.		P.M.	
6:00 to 6:30	4	4:30 to 5:00	2
6:30 to 7:00	5	5:00 to 5:30	3
7:00 to 7:30	5	5:30 to 6:00	6
7:30 to 8:00	5	6:00 to 6:30	6
8:00 to 8:30	5	6:30 to 7:00	5
8:30 to 9:00	3	7:00 to 7:30	3
9:00 to 9:30	2		

SCHEDULE ON COLLEGE POINT LINES

Operating between College Point and 59th Street, New York

Westbound service to New York past Woodside Barns	No. of cars	Eastbound service to College Point past Woodside Barns	No. of cars
A.M.		P.M.	
6:00 to 6:30	4	2:00 to 2:30	3
6:30 to 7:00	5	2:30 to 3:00	3
7:00 to 7:30	5	3:00 to 3:30	3
7:30 to 8:00	5	3:30 to 4:00	3
8:00 to 8:30	5	4:00 to 4:30	3
8:30 to 9:00	4	4:30 to 5:00	5
9:00 to 9:30	3	5:00 to 5:30	5
9:30 to 10:00	3	5:30 to 6:00	6
10:00 to 10:30	3	6:00 to 6:30	6
10:30 to 11:00	3	6:30 to 7:00	5
11:00 to 11:30	3	7:00 to 7:30	4
11:30 to 12:00 Noon	3	7:30 to 8:00	4
P.M.			
12:00 to 12:30	3	8:00 to 8:30	3
12:30 to 1:00	3	8:30 to 9:00	3
1:00 to 1:30	3	9:00 to 9:30	3
1:30 to 2:00	3	9:30 to 10:00	3
2:00 to 2:30	3	10:00 to 10:30	3
2:30 to 3:00	3	10:30 to 11:00	3
		11:00 to 11:30	2
		11:30 to 12:00	2

SCHEDULE ON CORONA LINE

Westbound service to New York past Woodside Barns	No. of cars	Eastbound service past Woodside Barns	No. of cars
A.M.		P.M.	
6:00 to 6:30	9	3:00 to 3:30	3
6:30 to 7:00	12	3:30 to 4:00	3
7:00 to 7:30	12	4:00 to 4:30	4
7:30 to 8:00	12	4:30 to 5:00	5
8:00 to 8:30	10	5:00 to 5:30	10
8:30 to 9:00	6	5:30 to 6:00	12
9:00 to 9:30	5	6:00 to 6:30	12
9:30 to 10:00	3	6:30 to 7:00	12
10:00 to 10:30	3	7:00 to 7:30	8
10:30 to 11:00	3	7:30 to 8:00	6
11:00 to 11:30	3	8:00 to 8:30	3
11:30 to 12:00 Noon	3	8:30 to 9:00	3
P.M.		9:00 to 9:30	3
12:00 to 12:30	3	9:30 to 10:00	3
12:30 to 1:00	3	10:00 to 10:30	3
1:00 to 1:30	3	10:30 to 11:00	3
1:30 to 2:00	3	11:00 to 11:30	3
2:00 to 2:30	3	11:30 to 12:00	3
2:30 to 3:00	3		

SCHEDULE ON STEINWAY LINE

Westbound service to New York past Steinway and Jackson Avenues	No. of cars	Service eastbound past Steinway and Jackson Avenues	No. of cars
A.M.		P.M.	
6:00 to 6:30	11	3:00 to 3:30	5
6:30 to 7:00	16	3:30 to 4:00	5
7:00 to 7:30	20	4:00 to 4:30	5
7:30 to 8:00	18	4:30 to 5:00	8
8:00 to 8:30	16	5:00 to 5:30	13
8:30 to 9:00	8	5:30 to 6:00	20
9:00 to 9:30	5	6:00 to 6:30	20
9:30 to 10:00	5	6:30 to 7:00	20
10:00 to 10:30	5	7:00 to 7:30	12
10:30 to 11:00	5	7:30 to 8:00	7
11:00 to 11:30	4	8:00 to 8:30	5
11:30 to 12:00 Noon	4	8:30 to 9:00	5
P.M.		9:00 to 9:30	4
12:00 to 12:30	4	9:30 to 10:00	4
12:30 to 1:00	4	10:00 to 10:30	4
1:00 to 1:30	5	10:30 to 11:00	4
1:30 to 2:00	4	11:00 to 11:30	4
2:00 to 2:30	4	11:30 to 12:00	4
2:30 to 3:00	4		

SCHEDULE ON LONG ISLAND CITY SHUTTLE LINE

Westbound service towards 34th Street Ferry, past Anable Street and Jackson Avenue	No. of cars	Eastbound service towards Queensboro Plaza past Anable Street and Jackson Avenue	No. of cars
A.M.		P.M.	
6:00 to 6:30	11	3:00 to 3:30	6
6:30 to 7:00	20	3:30 to 4:00	6
7:00 to 7:30	20	4:00 to 4:30	6
7:30 to 8:00	20	4:30 to 5:00	9
8:00 to 8:30	20	5:00 to 5:30	15
8:30 to 9:00	14	5:30 to 6:00	20
9:00 to 9:30	7	6:00 to 6:30	20
9:30 to 10:00	7	6:30 to 7:00	10
10:00 to 10:30	7	7:00 to 7:30	6
10:30 to 11:00	6	7:30 to 8:00	6
11:00 to 11:30	6	8:00 to 8:30	6
11:30 to 12:00 Noon	6	8:30 to 9:00	6
P.M.		9:00 to 9:30	4
12:00 to 12:30	6	9:30 to 10:00	4
12:30 to 1:00	6	10:00 to 10:30	4
1:00 to 1:30	6	10:30 to 11:00	4
1:30 to 2:00	6	11:00 to 11:30	4
2:00 to 2:30	6	11:30 to 12:00	4
2:30 to 3:00	6		

SCHEDULE ON BROADWAY LINE

Westbound service to New York past Broadway and Second Avenue	No. of cars	Eastbound service past Broadway and Second Avenue	No. of cars
A.M.		P.M.	
6:00 to 6:30	3	3:00 to 3:30	2
6:30 to 7:00	3	3:30 to 4:00	2
7:00 to 7:30	3	4:00 to 4:30	2
7:30 to 8:00	3	4:30 to 5:00	2
8:00 to 8:30	3	5:00 to 5:30	3
8:30 to 9:00	2	5:30 to 6:00	3
9:00 to 9:30	2	6:00 to 6:30	3
9:30 to 10:00	2	6:30 to 7:00	3
10:00 to 10:30	2	7:00 to 7:30	2
10:30 to 11:00	2	7:30 to 8:00	2
11:00 to 11:30	2	8:00 to 8:30	2
11:30 to 12:00 Noon	2	8:30 to 9:00	1
P.M.		9:00 to 9:30	2
12:00 to 12:30	2	9:30 to 10:00	1
12:30 to 1:00	2	10:00 to 10:30	2
1:00 to 1:30	2	10:30 to 11:00	1
1:30 to 2:00	2	11:00 to 11:30	2
2:00 to 2:30	2	11:30 to 12:00	1
2:30 to 3:00	2		

SCHEDULE ON FLUSHING AVENUE LINE

Westbound service to New York past Van Alst and Flushing Avenues	No. of cars	Eastbound service past Van Alst and Flushing Avenues	No. of cars
A.M.		P.M.	
6:00 to 6:30	3	3:00 to 3:30	2
6:30 to 7:00	3	3:30 to 4:00	2
7:00 to 7:30	3	4:00 to 4:30	2
7:30 to 8:00	3	4:30 to 5:00	2
8:00 to 8:30	2	5:00 to 5:30	3
8:30 to 9:00	2	5:30 to 6:00	3
9:00 to 9:30	2	6:00 to 6:30	3
9:30 to 10:00	2	6:30 to 7:00	3
10:00 to 10:30	2	7:00 to 7:30	2
10:30 to 11:00	2	7:30 to 8:00	2
11:00 to 11:30	2	8:00 to 8:30	2
11:30 to 12:00 Noon	2	8:30 to 9:00	2
P.M.		9:00 to 9:30	2
12:00 to 12:30	2	9:30 to 10:00	1
12:30 to 1:00	2	10:00 to 10:30	2
1:00 to 1:30	2	10:30 to 11:00	1
1:30 to 2:00	2	11:00 to 11:30	2
2:00 to 2:30	2	11:30 to 12:00	1
2:30 to 3:00	2		

The Order provided "that if at any time after the schedules above set forth have been in operation for a period of thirty days the New York & Queens County Railway Company is of the opinion that changed conditions warrant a reduction in the number of cars operated in any period the said company shall notify the Commission in writing of the conditions so changed and of the number of cars which in its opinion would be sufficient for such period or

periods to the end that the Commission may inquire into the said changed conditions and make such amendments to the said schedules as it deems just and reasonable."

Hearings closed May 12, 1916.

E. J. Crummey, for the Commission.

James L. Quackenbush, by *Arthur G. Peacock*, for the New York and Queens County Railway Company.

James S. Eadie, for the Flushing Association.

D. C. Imboden, for the Laurel Hill Improvement Association.

In the Matter of the Hearing on the Complaint of *N. DRESSLER*
against the EDISON ELECTRIC ILLUMINATING COMPANY OF
BROOKLYN, as to alleged refusal to furnish service.

CASE No. 2096: ORDER ENTERED MAY 18, 1916

SERVICE—ELECTRICAL CORPORATIONS—COMPLAINT DISMISSED.—The Order dismissed the complaint herein.

Hearings closed May 8, 1916.

H. H. Whitman, for the Commission.

T. R. Jones, for defendant Company.

N. Dressler, complainant, in person.

In the Matter of the Application of THE LONG ISLAND RAILROAD COMPANY and the PENNSYLVANIA TUNNEL AND TERMINAL RAILROAD COMPANY for the approval by the Public Service Commission for the First District of an extension of a certain agreement dated June 24, 1912, between the PENNSYLVANIA TUNNEL AND TERMINAL RAILROAD COMPANY, THE PENNSYLVANIA RAILROAD COMPANY, as operating agent for the Tunnel Company, and The Long Island Railroad Company, for trackage rights into and the use of the Pennsylvania Station, Borough of Manhattan, etc., from July 1, 1916, until July 1, 1917.

CASE No. 1834: ORDER ENTERED MAY 25, 1916

TRACKAGE RIGHTS—RAILROAD CORPORATIONS—EXTENSION OF AGREEMENT FOR TRACKAGE RIGHTS APPROVED.—The Order approved the extension for a further term of one year from July 1, 1916, of an agreement dated June 24, 1912, between the Pennsylvania Tunnel and Terminal Railroad Company, the Pennsylvania Railroad Company as operating agent of the former, and The

Long Island Railroad Company, granting the last named Company trackage rights between Sunnyside Yard, Long Island, and the Pennsylvania Station, Borough of Manhattan, and for the use of such station and yard.

In the Matter of the Hearing on Motion of the Commission on the Matter of Improvements and Additions to the Regulations, Practices, Appliances and Service of INTERBOROUGH RAPID TRANSIT COMPANY.

Preventive precautions in Respect of Fires and Short Circuits in Manhattan-Bronx Rapid Transit Railroad.

CASE No. 1902: RESOLUTIONS ADOPTED MAY 25, SEPTEMBER 28, OCTOBER 19 AND 26, AND NOVEMBER 16, 1916

SAFETY PRECAUTIONS—RAPID TRANSIT CORPORATIONS—PRECAUTIONS AGAINST FIRE IN SUBWAYS—APPROVAL OF CONTRACT.—The Resolution approved a proposed contract between the Interborough Rapid Transit Company and the New York Railways Company for a supply of power by the latter to the former for operating ventilating fans in case of emergency, subject to certain prescribed changes in paragraphs 10 and 12 of said agreement. Other Resolutions which were adopted approved the following: Agreement between the Interborough Rapid Transit Company and The Long Island Railroad Company providing for interchange of power to cover emergency lighting connections for the subway in Brooklyn, September 28, 1916; Drawing No. S-2840, as revised, showing wiring diagram of remote control circuit breakers controlled from sub-station #13, October 19, 1916; Drawing No. 16374, showing the enlargement of manhole No. 2, Division 2 of the subway, October 23, 1916; Drawing No. S-2930, showing wiring diagram of remote control circuit breakers controlled from sub-station No. 14, October 26, 1916; Drawing No. 16621, showing circuit breaker house at St. Anns and Westchester Avenues, subway division, October 26, 1916; Drawing No. S-2853, showing detail of boxes for terminal boards for feeder circuit breakers and Drawing No. S-2854, showing detail of method of supporting terminal boxes for feeder circuit breakers, November 16, 1916.

(For the Order entered on April 6, 1915, pursuant to which the proposed contract was submitted for the approval of the Commission, see 6 P. S. C. R. [1st Dist. N. Y.] 383.)

In the Matter of the Application of the KINGS COUNTY LIGHTING COMPANY for an Order Authorizing the Issue of a Further Amount of \$675,000, face value of bonds under its Mortgage or Deed of Trust to the Central Trust Company of New York, dated July 1st, 1904.

CASE NO. 2013: ORDERS ENTERED MAY 25 AND SEPTEMBER 8, 1916

BOND ISSUE—GAS CORPORATIONS—ISSUE OF BONDS FOR \$675,000 APPROVED.
 —The Order of September 8, 1916 modified the Order entered May 25, 1916, so as to authorize the Kings County Lighting Company to issue bonds in the amount of \$675,000 for capital purposes and, except the sum of \$67,500 or so much thereof as should be necessary to pay expenses of the sale and mortgage tax and to make up discount, none of the expenditures to be paid for by the proceeds from the issue of bonds authorized herein to be chargeable to operating expenses or to income. The bonds were to be issued on the following conditions: First; to be sold so as to net the Company not less than 90 per cent of par besides accrued interest and the proceeds to be applied (1) to the construction, completion, extension or improvement of its facilities, plant or distributing system \$472,954.57; (2) to reimbursement of moneys expended from income or other moneys in the treasury for construction, etc., \$134,545.43; and for expenses of the sale of bonds, for the payment of the mortgage tax and to cover discount on bonds, \$67,500. Second; said sum of \$67,500 to be amortized by setting aside from income annually at least 3 per cent of said amount plus 4½ per cent of all prior payments until said sum shall have been amortized. The payments made for said purpose to be turned into the cumulative sinking fund established under the provisions of the Order entered by the Commission on July 31, 1912 in Case No. 1474 (See 3 P. S. C. R. [1st Dist. N. Y.] 750); Third, separate accounts to be kept of the receipt and application of the proceeds of the sale of bonds and monthly reports thereof to be made to the Commission. Fourth, no expenditures to be made out of the proceeds of said bonds until an itemized bill setting forth that each expenditure represents a capital investment shall have been approved by the Commission. Fifth, the account of the Company to be adjusted to conform with the results of the investigation as to net expenditures for construction from November 1, 1914, to June 30, 1915, as follows:

	<i>Dr.</i>	<i>Cr.</i>
Trunk Lines and Mains—Account No. 231.....	\$10 70	\$93 60
Construction—Street mains—Account No. 6100.....	93 60	760 01
" —Services—Account No. 6100.....	.....	31 95
" —Meters—Account No. 6100.....	.....	42 15
	<u>\$104 30</u>	<u>\$927 71</u>
Net reduction in fixed capital.....	823 41	....
	<u>\$927 71</u>	<u>\$927 71</u>
Increase in fixed capital Jan. 1, 1912, to June 30, 1915—per books		\$135,368 84
Increase in fixed capital Jan. 1, 1912, to June 30, 1915—P. S. C.		134,545 43
Net reduction		<u>\$823 41</u>

Sixth, that the authority to issue said bonds shall apply only to bonds issued on or before December 31, 1916.

The Company refused to accept the Order of the Commission and, by a petition verified December 15, 1916, sued out a writ of certiorari to review the Commission's determination, which was granted by Mr. Justice Erlanger, of

the Supreme Court, New York County on December 16, 1916. Argument upon the writ before the Appellate Division is pending.

Hearings closed August 10, 1916.

Oliver C. Semple, for the Public Service Commission.

Ingraham, Sheehan & Moran, by *Ashley T. Cole* and *Samuel F. Moran*, for the Kings County Lighting Co.

In the Matter of the Application of THE BROOKLYN HEIGHTS RAILROAD COMPANY for Permission and Approval of the Commission, under Section 53 of the Public Service Commissions Law, of the Construction and Operation of an Extension of its Street Surface Railroad from Island Avenue (Avenue N), through private property to Flatbush Avenue, in the Borough of Brooklyn, City of New York.

CASE No. 2043: ORDER ENTERED MAY 25, 1916

FRANCHISES AND PRIVILEGES—STREET RAILROAD CORPORATIONS—OPERATION OF EXTENSION APPROVED.—The Order authorized The Brooklyn Heights Railroad Company to construct and operate an extension of its street railroad on the following route in the Borough of Brooklyn:

Beginning at the intersection of Island avenue (Avenue N) and Ralph avenue and running thence along Ralph avenue (now private property) to Mill avenue; thence along Mill avenue (now private property) to Kemble avenue; and thence along Kemble avenue (now private property) to a point opposite the main entrance of the property of the Gulf Refining Company, said extension being approximately 3,500 feet in length and being shown by an unbroken red line upon the map received in evidence as Applicant's Exhibit No. 4 at the hearing had in this matter.

Hearings closed April 17, 1916.

Edward M. Deegan, for the Commission.

D. A. Marsh, for the applicant company.

Lamar Hardy, by *William J. Clarke*, for the City of New York.

Cannon, Siebert & Riggs, by *R. E. T. Riggs*, for Atlantic Gulf and Pacific Company and National Lead Company.

In the Matter of the Hearing on the Complaint of NEW YORK MANUFACTURERS REAL ESTATE COMPANY *against* THE NEW YORK EDISON COMPANY as to its Interpretation of the Provision contained in the Second Paragraph of the Order of the Commission made on October 15th, 1915, in Case No. 1958.

CASE No. 2056: ORDER ENTERED MAY 25, 1916

METERS—ELECTRICAL CORPORATIONS—INTERPRETATION OF PROVISIONS OF ORDER OF COMMISSION—COMPLAINT DISMISSED.—The Order dismissed the complaint against the provisions contained in paragraph "Second" of an Order entered on October 15, 1915, in Case No. 1958, relating to the measurement of current supplied to each owner or lessee of a building, who resells some of said current to tenants, by a master meter and to the supply of but one meter to each customer, after the said provisions were interpreted to the satisfaction of the complainant.

(For the full text of the Order of October 15, 1915, and Opinions adopted on the same day see 6 P. S. C. R. [1st Dist. N. Y.] 289, 201-309.)

Hearings closed February 7, 1916.

H. H. Whitman, for the Commission.

Alfred E. Ommen, for the New York Manufacturers Real Estate Co.

Cardozo & Nathan, by *Edwin J. Nathan*, for Israel Unterberg.

Beardsley, Hemmens & Taylor, by *Henry J. Hemmens*, for The New York Edison Co.

Lamar Hardy, by *Vincent Victory*, for The City of New York.

Oscar A. Hirsh, appearing individually.

Isaac F. Cohen, for the Water Supervision Co.

In the Matter of the Hearing on Motion of the Commission to Determine Whether an Order Should be Made Requiring the BELT LINE RAILWAY CORPORATION to Relay, Repair or Alter the Rails on its Lines on 59th Street, between First Avenue and Fifth Avenue.

CASE No. 2098: ORDER ENTERED MAY 25, 1916

TRACKS—STREET RAILROAD CORPORATIONS—RERAILING REQUIRED.—The Order required the Belt Line Railway Corporation to rerail with new rails all the tracks of its double track street surface railroad on 59th Street between First and Fifth Avenues, in the Borough of Manhattan.

Hearings closed May 22, 1916.

Edward J. Crummey, for the Commission.

Edward A. Maher, Jr., for the Belt Line Railway Corporation.

In the Matter of the Application of THE LONG ISLAND RAILROAD COMPANY as to Relief from the Provisions of Section 36 of the Public Service Commissions Law with Reference to Rates on Gravel in carload lots from Blissville Docks to Long Beach and Intermediate Points.

CASE NO. 2099: ORDER ENTERED JUNE 1, 1916

RATES AND CHARGES—RAILROAD CORPORATIONS—FREIGHT RATES FOR GRAVEL IN CARLOAD LOTS.—The Order authorized The Long Island Railroad Company (1) to establish and maintain, effective May 2, 1916, a rate on gravel in carload lots of 40,000 pounds or more per car from Blissville Docks to Long Beach of 40 cents per 2000 pounds, (2) to continue from and after May 2, 1916, rates on gravel in carload lots of 40,000 pounds or more per car to the following intermediate points: Nichols Siding 42, Laurel Hill 42, Bushwick Junction 42, Glendale 47, Richmond Hill 47, Jamaica 47, St. Albans 47, Springfield 53, Rosedale 53, Valley Stream 53, Lynbrook 53. The Order provided that the rate of 40 cents per 2000 pounds from Blissville Docks to Long Beach should be continued until October 1, 1916, and not longer, except upon the additional authority from the Commission. The Order provided, moreover, that the Commission did not approve any rates established under this authority, all such rates being subject to complaint, investigation and correction if they should conflict with any other provision of the Public Service Commissions Law. A similar order was entered on June 6, 1916, by the Public Service Commission for the Second District.

Hearings closed May 26, 1916.

Oliver C. Semple, for the Commission.

C. L. Addison, for the applicant company.

In the Matter of the Hearing before both Commissions Concerning the Tracks, structures and Other Property of THE NEW YORK CENTRAL RAILROAD COMPANY and THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY at or near 241st Street in the Borough of The Bronx, City of New York.

CASE NO. 1929: RESOLUTIONS ADOPTED JUNE 8, AUGUST 23,
SEPTEMBER 14 AND SEPTEMBER 21, 1916

STATIONS AND STATION FACILITIES—CONSTRUCTION OF STATION AT 241ST STREET—PLANS AND SPECIFICATIONS APPROVED—PREVIOUS ORDERS AND RESOLUTIONS AMENDED.—The first Resolution approved the bid of McDougall and Potter Company for furnishing metal work for stairways. The second Resolution approved the bid of John Thatcher & Son for the construction of the new Wakefield passenger station at 241st Street. The Resolution of September 14, 1916, modified, *nunc pro tunc*, Orders and Resolutions adopted by the Commission on August 24, September 21, October 5 and 19, and December 21, 1915, January 13, March 2, April 13 and May 25, 1916, so as to strike out the provision that the Order or Resolution, as the Case may be, should take effect only if and when similar action should be taken by the Public Service Commission for the Second District. The Resolution of

September 21, 1916, approved plans and specifications for the construction of the new passenger station at 241st Street.

(For an Opinion adopted herein and a Resolution entered pursuant thereto on April 13, 1916, and an amended Resolution adopted on April 27, 1916, see 7 P. S. C. R. [1st Dist. N. Y.] 46.)

In the Matter of the Hearing on the Motion of the Commission
Concerning the Demurrage and Track Storage Charges of
THE LONG ISLAND RAILROAD COMPANY at Atkins Yard,
Brooklyn.—Complaint of THOMAS TOMLINSON.

CASE NO. 1990: ORDER ENTERED JUNE 8, 1916

RATES AND CHARGES—RAILROAD CORPORATIONS—DEMURRAGE AND TRACK
STORAGE CHARGES—PROCEEDINGS DISCONTINUED.—The Order directed the dis-
continuance of the proceedings herein on account of lack of jurisdiction.

Hearings closed September 1, 1915.

E. M. Deegan, for the Commission.

David C. Broderick, for the complainant.

C. L. Addison, for the respondent.

In the Matter of the Application of THE CITY OF NEW YORK for a
determination as to the Manner in which the Following Street
Shall be Extended across the Tracks of The Long Island Rail-
road Company in the Fourth Ward of the Borough of
Queens: 195th street (Catskill avenue) from Atlantic avenue
(99th avenue) to Sagamore avenue (98th avenue).

CASE NO. 2082: ORDER ENTERED JUNE 9, 1916; RESOLUTION
ADOPTED JUNE 29, 1916

GRADE CROSSINGS—EXTENSION OF STREET ACROSS RAILROAD—DETERMINA-
TION OF GRADE.—The Order entered was upon the application of the City of
New York by resolution of the Board of Estimate and Apportionment adopted
March 17, 1916, for a determination by the Commission of the grade of the
extension of 195th Street (Catskill Avenue) from Atlantic Avenue (99th Ave-
nue) to Sagamore Avenue (98th Avenue), in the Fourth Ward of the Bor-
ough of Queens, across the main line tracks of The Long Island Railroad
Company, and provided that said street shall cross said tracks under the
grade of the railroad, as shown on a map or plan put in evidence herein as
Exhibit No. 5-A, and bearing the endorsement—*Plan & Profile showing
Proposed New Crossing at 195th St., Hollis, Main Line—Long Island R. R.*
The Order required the Company to submit to the Commission for its ap-
proval detailed plans and specifications of the work and the bids of con-

tractors for such work. The Resolution approved blue print drawings submitted by the Company, entitled "Long Island Railroad. Hollis Elimination 195th Street Bridge. Plan and Details of Steel. Scales as noted Jamaica. N. Y. Bridge No. G 120, June 21, 1916. Drawing No. 1", and the bid of the American Bridge Company for fabrication and delivery of structural steel.

Hearings closed May 22, 1916.

H. M. Chamberlain, for the Commission.

Lamar Hardy, by *William J. Clarke*, for the City of New York.

L. J. Carruthers, for The Long Island Railroad Company.

W. F. Williams, for the Hollis Civic Association.

Andrew Dunbar, *E. T. Hogan* and *H. B. Salisbury*, of the Hollis Civic Association.

In the Matter of the Notices to be given by Every Street Surface Railroad Corporation Subject to the Jurisdiction of the Public Service Commission for the First District Respecting the Turning Back of Cars Before Reaching their Destination Points.

CASE NO. 2106: ORDER ENTERED JUNE 9 AND JULY 27, 1916

TURNING BACK OF CARS—STREET RAILROAD CORPORATIONS—FILING OF REPORTS REQUIRED.—The Order of June 9, 1916, as amended on July 27, 1916, required every street surface railroad corporation, subject to the jurisdiction of the Commission, to file a prescribed form of report of every instance of turning back a car before reaching the destination indicated on the sign, not later than 24 hours after its occurrence.

Hearing closed July 11, 1916.

E. J. Crummey, for the Commission.

James L. Quackenbush, by *Arthur G. Peacock*, for the Interborough Rapid Transit Company, New York Railways Company, New York & Queens County Railway Company, The New York and Long Island Traction Company and Long Island Electric Railway Company.

Edward A. Maher, Jr., for the Third Avenue Railway Co.

M. B. Hoffman, for the Brooklyn Rapid Transit Co.

Willis Terry, for The Van Brunt Street and Erie Basin Railroad Co.

Mr. Wile, in person.

In the Matter of the Complaints of GEORGE A. DENHOLM and GEORGE W. M. CLARK *against* UNION RAILWAY COMPANY of NEW YORK CITY, Regarding the Service of said Company on Jerome Avenue, beyond "Woodlawn".

CASE NO. 243: ORDER ENTERED JUNE 15, 1916

SERVICE—STREET RAILROAD CORPORATIONS—SCHEDULE OF OPERATION—PREVIOUS ORDER AMENDED.—The Order amended an Order entered on February 7, 1908, so as to require the Union Railway Company of New York City to establish the following operating schedule, to be maintained daily except Sundays and legal holidays:

1. From 1:00 A. M. to 6:00 A. M., 20 min. from City Line to 155th St.
2. " 6:00 " " 9:00 " 12 " from City Line to 155th St.
3. " 6:00 " " 9:00 " 6 " from Woodlawn to 155th St.
4. " 6:00 " " 9:00 " 3 " from Kingsbridge Rd. to 155th St.
5. " 9:00 " " 4:30 P. M., 16 " from 155th St. to City Line
6. " 9:00 " " 4:30 " 8 " from 155th St. to Woodlawn
7. " 4:30 P. M. " 7:00 " Same service as in the A. M.
8. " 7:00 " " 1:00 A. M., 20 min. from 155th St. to City Line
9. " 7:00 " " 1:00 " 10 " from 155th St. to Woodlawn

The Order rescinded, also, paragraphs Nos. 1 and 2 of Order No. 107 entered by the Commission on November 22, 1907.

(For the Order entered herein on February 7, 1908, see 3 P. S. C. R. [1st Dist. N. Y.] 548, and for Order No. 107, see Annual Report, 1907, Vol. 1, page 727.)

In the Matter of the Hearing on the Motion of the Commission
Concerning the Organization, Operation, Franchises, Rights,
Duties and Obligations of the BUSH TERMINAL RAILROAD
COMPANY.

CASE NO. 2024: ORDER ENTERED JUNE 15, 1916

INVESTIGATIONS—TERMINAL CORPORATIONS—CORPORATE BUSINESS—PROCEEDING DISCONTINUED.—The Order discontinued the proceeding herein.

Hearings closed April 10, 1916.

H. M. Chamberlain, for the Commission.

Arthur E. Goddard, for Bush Terminal Railroad Company.

Lamar Hardy, by *W. J. Clarke*, for The City of New York.

In the Matter of the Hearing on the Motion of the Commission on
the Question of Repairs, Improvements, Changes or Addi-
tions in and to the Equipment of ALL STREET RAILROAD
CORPORATIONS Owning, Operating or Managing Surface Cars
on Street Railroads Subject to the jurisdiction of the Com-
mission, in Respect of Brakes and Brake Shoes on Such
Surface Cars.

CASE NO. 1746: RESOLUTION ADOPTED JUNE 19, 1916

EQUIPMENT—STREET RAILROAD CORPORATIONS—PLAN OF TYPE OF BRAKE

SHOE APPROVED.—The Resolution approved a plan entitled "Vulcan Brake Shoe and Equipment Co. Improvement Design and Anti-noise Brake Shoe Drawing No. 501."

(For the Order entered on December 19, 1913, and the Opinion adopted on that day, requiring the above equipment, see 4 P. S. C. R. [1st Dist. N. Y.] 476.)

In the Matter of the Hearing on the Motion of the Commission on the Question of Alterations and Changes in the Following Grade Crossing of the Tracks of THE STATEN ISLAND RAPID TRANSIT RAILWAY COMPANY.—Crossing at Pennsylvania Avenue, Rosebank.

CASE NO. 1756: RESOLUTIONS ADOPTED JUNE 19 AND NOVEMBER 22, 1916

GRADE CROSSING ELIMINATION—PLANS AND ESTIMATES—BIDS APPROVED.—The first Resolution approved the bid of Brann & Stewart Company for furnishing labor and material for the construction of the bridge at Pennsylvania Avenue at \$9,072. The second Resolution approved the bid of J. E. Donovan for furnishing labor and material for curbing, guttering and paving the low level roadway of Pennsylvania Avenue between Anderson Street and the railroad right of way at \$2,004.48.

Hearings closed January 11, 1916.

Arthur DuBois, for the Commission.

Crawth & Henderson, by *Rufus J. Trimble* and *W. B. Redgrave*, for The Staten Island Rapid Transit Railway Co.

Nelson P. Lewis, for The City of New York.

In the Matter of the Hearing on the Motion of the Commission on the Question of Improvement in and Addition to the Service and Equipment of THE BROOKLYN HEIGHTS RAILROAD COMPANY; BROOKLYN, QUEENS COUNTY AND SUBURBAN RAILROAD COMPANY; SOUTH BROOKLYN RAILWAY COMPANY; BROOKLYN UNION ELEVATED RAILROAD COMPANY; NASSAU ELECTRIC RAILROAD COMPANY; SEA BEACH RAILWAY COMPANY; CONEY ISLAND AND GRAVESEND RAILWAY COMPANY; THE CONEY ISLAND AND BROOKLYN RAILROAD COMPANY; THE VAN BRUNT STREET AND ERIE BASIN RAILROAD COMPANY; BUSH TERMINAL RAILROAD COMPANY; NEW YORK & QUEENS COUNTY RAILWAY COMPANY; LONG ISLAND ELECTRIC RAILWAY COMPANY; THE NEW YORK AND LONG

ISLAND TRACTION COMPANY, and OCEAN ELECTRIC RAILWAY COMPANY, in Respect to Fenders and Wheel Guards and Safety Devices used in Connection therewith on Surface Cars Operated in the Boroughs of Brooklyn and Queens, City of New York.

CASE No. 1048: RESOLUTIONS ADOPTED JUNE 22 AND JULY 6, 1916

FENDERS AND WHEELGUARDS—STREET RAILROAD CORPORATIONS—FENDER REQUIREMENT RESCINDED—TYPE OF WHEELGUARD APPROVED.—The first Resolution rescinded the provision of the Order entered April 27, 1909, as to the requirement of the Bush Terminal Railroad Company to install a fender at each end of its cars, and approved the operation of a type of wheelguard known as "H-B life guard" which was required to be adjusted in a prescribed manner.

The second Resolution authorized the operation by the Ocean Electric Railway Company of the type of wheelguard approved by the Resolution adopted December 17, 1915.

(For a digest of the Order entered April 27, 1909, see 3 P. S. C. R. [1st Dist. N. Y.] 612; and for that of the Resolution adopted December 17, 1915, see 6 id. 460.)

In the Matter of the Application of the BRONX GAS AND ELECTRIC COMPANY for Approval of a Further Issue of \$200,000 of Bonds.

CASE No. 1667: RESOLUTION ADOPTED JUNE 22, 1916

BOND ISSUE—GAS AND ELECTRIC CORPORATIONS—APPROVAL OF EXPENDITURES.—The Resolution authorized the Bronx Gas and Electric Company to withdraw \$27.18 from the sale of bonds for \$200,000 authorized by Order of the Commission of April 29, 1913, as amended, and to apply the same to the payment of the net charges for extensions and additions to the physical property of said Company as set forth in the statement attached to the application of said Company dated November 9, 1915, entitled "The Bronx Gas & Electric Company, Case No. 1940, Increase Fixed Capital, October 1915."

(For Opinions adopted and Orders previously entered herein see 4 P. S. C. R. [1st Dist. N. Y.] 202, and 6 id. 243 and 337, and for an Order entered May 21, 1915, in Case No. 1940, see 6 P. S. C. R. [1st Dist. N. Y.] 400.)

In the Matter of the Hearing on Motion of the Commission to Determine Whether an Order Should be Made Requiring THE LONG ISLAND RAILROAD COMPANY to Equip with an

Emergency Lighting System the Subway-type of Cars
Operated on the Atlantic Division.

CASE NO. 1925: ORDER ENTERED JUNE 22, 1916

EQUIPMENT—RAILROAD CORPORATIONS—EMERGENCY LIGHTING SYSTEM ON ATLANTIC DIVISION REQUIRED.—The Order required The Long Island Railroad Company to instal on or before May 1, 1917, an emergency lighting system in its subway type of cars known as "M. P. 41", operated on the Atlantic Division, said emergency lighting system to be of sufficient capacity to operate in each of said cars at least three lamps of not less than 8 candle power each at their rated candle power, so connected that such lamps shall be lighted whenever the electric current for the regular lighting system fails or is interrupted; one of such lamps to be placed at each end of each car and the other at equal intervals between the lamps at the ends.

Hearings closed June 2, 1916.

Edward M. Deegan, for the Commission.

C. L. Addison, for The Long Island Railroad Company.

In the Matter of the Hearing on Motion of the Commission on the
Question Whether a Shelter or Shelters Should be Provided
by the NEW YORK RAILWAYS COMPANY at or near the East
23rd Street Ferry.

CASE NO. 2010: ORDER ENTERED JUNE 22, 1916

STATION FACILITIES—STREET RAILROAD CORPORATIONS—SHELTER AT FOOT OF EAST 23RD STREET—PROCEEDING DISCONTINUED.—The Order discontinued the proceedings herein upon evidence that the construction and maintenance of a shelter at East 23rd Street Ferry was not warranted.

Hearings closed September 21, 1915.

Edward J. Crummey, for the Commission.

James L. Quackenbush, by *Arthur G. Peacock*, for the New York Railways Co.

In the Matter of the Complaint of the CAVANAGH COMPANY *against*
THE EDISON ELECTRIC ILLUMINATING COMPANY OF BROOK-
LYN on account of charges for electric current based on a
master meter.

CASE NO. 2104: ORDER ENTERED JUNE 22, 1916

RATES AND CHARGES—ELECTRICAL CORPORATIONS—CHARGES BASED ON

MASTER METER—COMPLAINT DISMISSED.—The Order entered directed that the complaint herein be dismissed as ill founded.

Hearings closed June 19, 1916.

H. H. Whitman and *Thos. D. Hoxsey*, for the Commission.

James F. Cavanagh and *Arthur F. Cavanagh*, for the complainant company.

C. E. Butts and *M. S. Seelman*, for the respondent company.

In the Matter of the Form of Annual Report for Year Ending June 30, 1916, to be Filed by OPERATING STREET AND ELECTRIC RAILROAD CORPORATIONS within the Jurisdiction of the Public Service Commission for the First District in Accordance with Section 46 of the Public Service Commissions Law.

CASE NO. 2109: ORDER ENTERED JUNE 22, 1916

REPORTS—STREET RAILROAD CORPORATIONS—OPERATING COMPANIES—FORM OF ANNUAL REPORT PRESCRIBED.—The Order approved the form of annual report prepared by the Chief Statistician for operating street railway companies for the year ending June 30, 1916, and designated "Annual Report Form E—Operating Street and Electric Railways (Serial Form No. R 86)", and required such companies to use the same.

In the Matter of the Form of Annual Report for the Year Ending June 30, 1916, to be filed by STREET AND ELECTRIC RAILROAD CORPORATIONS Owning but not Operating a Railroad.

CASE NO. 2110: ORDER ENTERED JUNE 22, 1916; RESOLUTION ADOPTED DECEMBER 27, 1916

REPORTS—STREET RAILROAD CORPORATIONS—LESSOR COMPANIES—FORM OF ANNUAL REPORT PRESCRIBED.—The Order approved the form of annual report prepared by the Chief Statistician for lessor street railway companies for the year ending June 30, 1916, and designated "Annual Report Form D—Street and Electric Railways (Serial No. R 87)", and required such companies to use the same. The Resolution directed the Counsel to the Commission to commence a penalty action against the Rockaway Electric Railway Company for failure to file its annual report as prescribed by the above Order.

In the Matter of the Form of Annual Report for the Year Ending June 30, 1916, to be Filed by COMMON CARRIERS that have

not Commenced Commercial Operation or have Discontinued Operation.

CASE NO. 2111: ORDER ENTERED JUNE 22, 1916

REPORTS—COMMON CARRIERS—INCHOATE COMPANIES—FORM OF ANNUAL REPORT PRESCRIBED.—The Order prescribed Form C, Bureau of Statistics and Accounts (Serial Form No. R 47), adopted by the Commission June 27, 1911, as the form of the annual report required to be filed by inchoate and dormant railroad, street railroad and stage coach companies for the year ending June 30, 1916.

In the Matter of the Form of Annual Report for the Year Ending June 30, 1916, to be Filed by BAGGAGE COMPANIES and TRANSFER COMPANIES within the Jurisdiction of the Public Service Commission for the First District.

CASE NO. 2112: ORDER ENTERED JUNE 22, 1916

REPORTS—BAGGAGE AND TRANSFER COMPANIES—FORM OF ANNUAL REPORT PRESCRIBED.—The Order prescribed the form of annual report to be filed by baggage and transfer and express companies for the year ending June 30, 1916, as prepared by the Chief Statistician of the Commission.

In the Matter of an Investigation for the Purpose of Determining Whether, in Order to Insure Uniform and Adequate Dissemination of Information as to the Rates, Contracts and Practices Relating to Service Furnished by Electrical Corporations, and to Prevent Discrimination and Unreasonable Preference by Electrical Corporations and also Deviation from their Rates, an Order Should be Issued by the Commission with Respect thereto.

CASE NO. 823: ORDER ENTERED JUNE 23, 1916

TARIFF SCHEDULES—ELECTRICAL CORPORATIONS—FILING OF TARIFF SCHEDULES REQUIRED—PREVIOUS ORDER AMENDED.—The Order amended an Order entered December 10, 1912, so as to require electrical corporations selling both direct and alternating current, to indicate the boundaries of the districts in which each kind of current is sold, by striking out the provision contained in Section 2, requiring that the schedule and supplements of electrical corporations be printed on calendared paper, and by changing the reference to

the office address of the Commission. The Order as amended, provided as follows:

Section 1. Every electrical corporation subject to the jurisdiction of the Public Service Commission for the First District shall, at least thirty days before any schedule of rates or forms of contracts go into effect, file with the Commission and shall, for the same length of time, keep open to public inspection, printed schedules showing all rates and charges made, established or enforced or to be charged or enforced, all forms of contract or agreement and all rules and regulations relating to rates, charges or service used or to be used by such electrical corporation.

§2. All such schedules and supplements thereto shall be printed on paper of good quality in sheet or pamphlet form of 8½ by 11 inches in size. Stereotype, planograph or other printing press process may be used.

§3. The title page of every schedule and supplement thereto shall show in full:

- (a) Name of issuing corporation.
- (b) The serial number of that schedule with proper prefix. (See Section 10 (d).)
- (c) The area to which that schedule applies.
- (d) Date of issue, date of posting, and date effective. (See Sections 1, 7 and 9.)
- (e) Name, title and address of officer by whom issued. (See Section 11.)
- (f) On upper left-hand corner of every schedule the words "Only one supplement to this schedule may be in effect at any time." (See Section 6 (a).)
- (g) On every schedule or supplement cancelling a schedule or supplement, a notice of such cancellation, giving the P. S. C. number of such schedule. (See Schedule 5 (a).)
- (h) On every schedule or supplement issued on less than 30 days' notice by permission from or order or regulation of the Commission, the following notation: "Issued on * * * days' notice to the public and Commission, under special permission or order of the Public Service Commission for the First District, State of New York, No. _____, of date _____"

Contents of Schedule.

§4. Each schedule shall contain in the order named:

- (a) Title page.
- (b) Table of contents.
- (c) Explanation of reference marks and technical abbreviations used in the schedule or supplement.
- (d) Such explanatory statement in clear and explicit terms regarding the matter contained in the schedule as may be necessary to remove all doubt as to its proper application.
- (e) General rules and regulations relating to rates, contracts and the use of electricity by the public or any apparatus furnished by the corporation.
- (f) An exact copy of every form of contract and schedule rates each to be followed by an exact copy of every form of rider applicable thereto; but any corporation may insert at its discretion in any contract a standard clause relating to any minor service condition, provided such standard clause shall first have been submitted by the said corporation to and approved by the Commission.

(g) Corporations selling both direct and alternating current shall indicate the boundaries of the districts in which each kind of current is sold.

§5. (a) A schedule may be cancelled only by a superseding schedule.

(b) If a schedule is cancelled by the issuance of a superseding schedule, cancellation notice must not be given by supplement, but by notice printed in the new schedule, making specific reference to the P. S. C. number of the schedule cancelled.

(c) Cancellation of the schedule also cancels supplement to such schedule, if any be in effect.

§6. (a) Only one schedule including one supplement for each corporation may be in effect at any one time.

(b) A schedule may be amended or altered by a supplement, but only one supplement may be in effect at any one time, and every supplement shall state what schedule it modifies, giving the P. S. C. number.

(c) Any supplement may be cancelled or superseded by another supplement.

(d) Supplements to a schedule shall be numbered as consecutive supplements to that schedule and shall not be given new or separate P. S. C. numbers.

§7. (a) The title page of every schedule and supplement must show fully 30 days' notice, or bear a plain notation of the number and date of the permission, or the rule, or the decision of the Commission under which it is effective on less than the regular notice.

(b) Changes of schedules and supplements may be permitted by the Commission on less than the regular 30 days' notice, but such permission will be granted only in cases where actual emergency or substantial merit is shown, or where the change reduces a rate. Applications, duly verified, for permission to put in force a schedule or supplement on less than 30 days' notice, shall be addressed to the Public Service Commission for the First District, State of New York, N. Y., in the form prescribed by Section 11, and must be over the signature of the officer charged with the preparation, posting and filing of schedules, specifying title. Action will be taken only on receipt of the verified application. (See Section 11 (b), Form No. 2.)

§8. After notice of a change in a schedule or a supplement has been filed and published, the new schedule must be allowed to go into effect and cannot be withdrawn, cancelled, superseded or amended, except upon notice filed and published for at least 30 days after the date when the schedule has become effective, or upon shorter notice allowed by the Commission.

§9. Printed copies of all schedules and supplements in force or to be placed in force shall, except as herein provided, be kept posted for at least 30 days before put into effect, in two public and conspicuous places in every office or place where applications for service are received in such manner as to be readily accessible to and conveniently inspected by the public.

§10. (a) Every schedule and supplement shall be filed with the Commission by the proper officer of the electrical corporation.

(b) Schedules and supplements sent for filing must be addressed to Secretary, Public Service Commission, First District, No. 120 Broadway, New York, N. Y.

(c) Every schedule and supplement filed with the Commission shall be accompanied by a letter of transmittal in duplicate. (See Section 11 (a) for form.) The original will be retained by the Commission and the duplicate will be stamped and returned to the filing corporation as its receipt for the schedule or supplement covered thereby.

(d) All schedules filed with the Commission must bear consecutive serial numbers, commencing with No. 1 for each corporation, with the following prefix thereto: "P. S. C.—1 N. Y." For example, the first schedule shall be "P. S. C.—1 N. Y.—No. 1." Such prefix and number must be printed in bold type, in the upper right corner at the top of page, and immediately thereunder, in smaller type, the P. S. C. number of every schedule and supplement cancelled thereby.

(e) The schedule filed with a P. S. C. number, which is not consecutive with the last number filed, must be accompanied by a memorandum explaining the omission of the missing number or numbers.

(f) When a schedule or supplement is rejected by the Commission as unlawful, the records so show and, therefore, such schedule or supplement should not thereafter be referred to as cancelled, amended or otherwise except to note on publication issued in lieu of such rejected schedule "In lieu of _____, rejected by Commission," nor shall the number which it bears be again used.

(g) No schedule or supplement will be accepted for filing unless it is delivered to the Commission, free from all charges or claims for postage, the necessary time before the date upon which such schedule is stated to be effective. No consideration will be given to or for the time during which a schedule or supplement may be held by the Post-Office authorities because of insufficient postage. Schedules or supplements filed and issued without proper notice to the Commission will be returned to the sender. Full notice must be given of any reissue thereof, and correction of the neglect or omission cannot be made which takes into account any time elapsing between the date upon which such schedule or supplement was received and the date of attempted correction.

(h) No consideration will be given to telegraphic notices in computing the 30 days required.

(i) If publication is not according to these regulations this may be considered by the Commission sufficient cause for rejection of schedule or supplement when tendered for filing.

§11. The following forms are prescribed for use by corporations on paper of 8½ by 11 size:

(a) Letter of Transmittal. Form No. 1.

.....
(Name of corporation.)

(Date).....

Advice No.....

To the Public Service Commission,
First District, State of New York,
New York, N. Y.:

Accompanying schedule or supplement is sent to you for filing in compliance with Order in Case No. 823 of the Public Service Commission for the First District, issued by
bearing

P. S. C.—1 N. Y.—No.....;

Supp. No....., to P. S. C.—1 N. Y.—No.....;

Effective....., 19....

.....
(Signature of filing agent.)

(b) APPLICATION TO CHANGE A SCHEDULE OR SUPPLEMENT ON LESS THAN THIRTY DAYS' NOTICE. FORM NO. 2.

.....
(Name of corporation.)

....., 19....

(Place and date.)

TO THE PUBLIC SERVICE COMMISSION,
First District, State of New York,
New York, N. Y.:

The by.....
(Name of corporation.) (Name of officer.)

its
(Title of officer.)

hereby applies under Order in Case No. 823 of the Public Service Commission for the First District for an order granting permission to put in effectdays after publication at offices and filing with the Commission the following schedule supplement:

.....
The proposed change is intended to be published in schedule P. S. C.—1 N. Y.—No....., Supplement No....., and will affect the schedule P. S. C.—1 N. Y.—No....., Supplement No....., attached.

.....
This application is based upon the following special circumstances and conditions:
.....

.....
 (Name of corporation.)

By.....
 (Officer.) (Title.)

AFFIDAVIT.

STATE OF NEW YORK, }
 County of..... } ss.:

....., being duly sworn,
 says that he is the officer above named, and that he has read the foregoing
 application and knows the contents thereof, and that the same is true of his
 own knowledge, except as to the matters therein specifically stated as on
 information and belief, and as to such matters he believes it to be true.

.....
 (Name of affiant.)

Subscribed and sworn to before me
 this.....day of.....19...

Notary Public.

§ 12. Nothing herein shall be construed as applicable to schedules of rates
 and forms of contracts relating to service rendered to the City or State of
 New York, or to the United States government, save that every electrical
 corporation shall file with the Commission a copy of every contract relating
 to such service made with the City or State of New York or with the United
 States government, within ten days from the receipt of the signed contract
 by the company, but in no event shall more than three months from the date
 of signing any such contract be allowed to elapse before a copy of such con-
 tract shall be filed with the Commission.

Nothing herein shall be construed as applicable to any contract between
 an electrical corporation and a street railroad corporation relating to service
 rendered to such street railroad corporation, save that every electrical cor-
 poration shall file with the Commission a copy of every such contract within
 ten days from the date of execution of such contract.

§ 13. This order shall take effect July 1, 1916, and shall continue in force
 until abrogated or modified by the Commission.

§ 14. Every electrical corporation within the jurisdiction of the Public
 Service Commission for the First District shall notify the Commission within
 ten days after service of this Order whether the terms of this Order are
 accepted and will be obeyed.

(For the abstract of an order entered October 8, 1912, see 3 P. S. C. R.
 [1st Dist. N. Y.] 759; for previous orders entered in 1908 and 1909, see 3
 id. 589; and for an Opinion adopted and an Order entered on December 18,
 1908, see 1 P. S. C. R. [1st Dist. N. Y.] 377).

In the Matter of the Form of Annual Report to be Filed by the
 FIFTH AVENUE COACH COMPANY.

CASE NO. 2113: ORDER ENTERED JUNE 26, 1916

REPORTS—STAGE COACH CORPORATIONS—FORM OF ANNUAL REPORT PRE-
 SCRIBED.—The Order required the Fifth Avenue Coach Company to file a
 report for the year ending June 30, 1916, in the form prescribed by the Com-
 mission by an Order entered June 22, 1916, for operating street and electric
 railroad corporations, and designated as "Annual Report Form E (Serial

Form R-86)," in so far as applicable. It was provided, however, that the expenses should be stated in accordance with the classification filed by the Company on or about July 15, 1914.

In the Matter of the Hearing on the Motion of the Commission on the Question of Alterations and Changes in the Following Grade Crossings with the Tracks of THE LONG ISLAND RAILROAD COMPANY—Farmers Avenue at Hollis, Bennett or Bayless Avenue, Wertland Avenue, Grand Avenue and Madison Avenue.

CASES NOS 1264 AND 1380: RESOLUTION ADOPTED JUNE 29, 1916

GRADE CROSSING ELIMINATION—DETERMINATION OF GRADE—PLAN OF BRIDGE AND CONTRACT APPROVED.—The Resolution approved the plan and detail of steel work for the bridge to be erected at the Jamaica and Hempstead Turnpike and a contract with the American Bridge Company for the manufacture and delivery of steel.

(For previous actions of the Commission in these cases see 2 P. S. C. R. [1st Dist. N. Y.] 369.)

In the Matter of the Hearing on the Motion of the Commission on the Question Whether THE LONG ISLAND RAILROAD COMPANY Should be Required to Provide Additional Cars for Use in Electrical Operation.

CASE NO. 1764: ORDER ENTERED JUNE 29, 1916

SERVICE—RAILROAD CORPORATIONS—CARS FOR ELECTRICAL OPERATION—PROCEEDING DISCONTINUED.—The Order discontinued the proceeding started herein to determine whether additional cars should be provided by The Long Island Railroad Company for electrical operation.

Hearings closed May 18, 1915.

H. M. Chamberlain, for the Commission.

Alfred A. Gardner, for The Long Island Railroad Company.

In the Matter of the Hearing on the Motion of the Commission Concerning the Rates and Charges for Gas in the Fourth Ward of Queens.

CASE No. 1807: ORDER ENTERED JUNE 29, 1916

RATES—GAS CORPORATIONS—MODIFICATION OF ORDER REDUCING RATE TO 95 CENTS PER 1000 CU. FT. DENIED.—The Order denied the application for a modification of the Order entered May 25, 1916, reducing the rates for gas charged by the companies herein from one dollar to ninety-five cents per 1000 cu. ft.

(For the Order entered May 25, 1916, and an Opinion rendered on the same day, see 7 P. S. C. R. [1st Dist. N. Y.] 129.)

Hearings closed June 21, 1916.

H. H. Whitman, for the Commission.

Cullen & Dykman, by *William N. Dykman*, for The Newtown Gas Company.

George J. Rhodius and *Adam Christman*, for the complainants.

In the Matter of the Hearing on Motion of the Commission to Determine Whether an Order Should be Made Requiring THE LONG ISLAND RAILROAD COMPANY to Retire from Service or to Equip with Proper Lighting Facilities its old Wooden Coaches Operated in Steam Trains Running between Long Island City and Rockaway Beach.

CASE No. 1964: ORDER ENTERED JUNE 29, 1916

EQUIPMENT—RAILROAD CORPORATIONS—LIGHTING SYSTEM IN WOODEN COACHES—PROCEEDING DISCONTINUED.—The Order discontinued the proceeding herein pursuant to a report of the Electrical Engineer of the Commission that the ceilings of the wooden coaches operated by The Long Island Railroad Company between Long Island City and Rockaway Beach were painted white and that the illumination has thereby been improved.

Hearings closed May 26, 1915.

E. M. Deegan, for the Commission.

C. L. Addison, for The Long Island Railroad Co.

In the Matter of the Hearing on the Complaint of HARRY L. REICHENBACH *against* the NEW YORK AND QUEENS ELECTRIC LIGHT AND POWER COMPANY on Account of Alleged Overcharge.

CASE No. 2101: RESOLUTION ADOPTED JUNE 29, 1916

RATES AND CHARGES—ELECTRICAL CORPORATIONS—OVERCHARGE DETER-

MINED.—The Resolution declared that in the opinion of the Commission the charges of \$18.12 and \$13.80 for electricity furnished to the complainant during the months of November and December, 1915, respectively, were unreasonable, and that the just and reasonable charges for each of said months should have been not more than \$5.00. The resolution was adopted by the votes of Chairman Straus, Commissioners Hayward, Hodge and Whitney for, and Commissioner Hervey against the Resolution. In voting, Commissioner Hervey stated that he was not in favor of the resolution, in view of the advice of counsel that the Commission had no authority to order an electrical corporation to make reparation for an overcharge.

Hearings closed June 19, 1916.

H. H. Whitman, for the Commission.

Shearman & Sterling, by P. F. W. Ruther, for the New York and Queens Electric Light and Power Company.

Harry L. Reichenbach, the complainant, in person.

In the Matter of the Hearing on the Motion of the Commission to Inquire and Determine Whether all Street Railroad Corporations Owning or Operating Cars on Elevated Lines Within the Jurisdiction of the Commission Should be Required to Equip all said Cars Having Steel Wheels With Brake Shoes containing an Insert of Lubricant or with some other Device Equally Efficient for the Purpose of Lessening Noise.

CASE NO. 2102: ORDER ENTERED JUNE 29, 1916

EQUIPMENT—ELEVATED RAILROADS—CARS TO BE EQUIPPED WITH BRAKE SHOES.—The Order required all street railroad corporations owning or operating cars on elevated lines within the jurisdiction of the Commission to equip a sufficient number of cars operated on the elevated lines with brake shoes containing an insert of lubricant, or with some other device equally efficient for the purpose of lessening noise, and to operate said cars for a sufficient length of time to determine whether such brake shoes or devices are practicable, and to report to the Commission the results of such experiment.

In the Matter of the Hearing on the Motion of the Commission as to Transfers between the DeKalb Avenue Line of the CONEY ISLAND & BROOKLYN RAILROAD COMPANY, the RICHMOND HILL LINE OF THE BROOKLYN HEIGHTS RAILROAD COMPANY and the JAMAICA AVENUE LINE of the BROOKLYN, QUEENS COUNTY & SUBURBAN RAILROAD COMPANY at Seneca and

Myrtle Avenues and at Myrtle and Jamaica Avenues in the Boroughs of Brooklyn and Queens, City of New York.

CASE NO. 2107: ORDER ENTERED JUNE 29, 1916

THROUGH ROUTES AND JOINT FARES—STREET RAILROAD CORPORATIONS—PROCEEDINGS DISCONTINUED.—The Order discontinued the proceedings instituted to determine whether an Order should be entered directing the companies herein to establish a through route westbound between the Jamaica Avenue line of the Brooklyn, Queens County and Suburban Railroad Company, the Richmond Hill line of The Brooklyn Heights Railroad Company and the DeKalb Avenue line of The Coney Island and Brooklyn Railroad Company by the exchange of transfers westbound at Myrtle and Jamaica Avenues, and at Myrtle and Seneca Avenues.

Hearings closed June 20, 1916.

Arthur DuBois, for the Commission.

Herman Gohlinghorst, *Charles F. Schmitt* and *Daniel M. Ebert*, for the complainants.

In the Matter of the Hearing on the Motion of the Commission on the Question Whether the Lorimer Street Line of THE BROOKLYN HEIGHTS RAILROAD COMPANY Should be Extended to Coney Island Avenue.

CASE NO. 2118: ORDER ENTERED JULY 6, 1916

SERVICE—STREET RAILROAD CORPORATIONS—EXTENSION OF LORIMER STREET LINE—PROCEEDINGS DISCONTINUED.—The Order discontinued the proceeding herein without prejudice to the re-opening of the same or the institution of other proceedings covering the same subject-matter.

Hearings closed July 26, 1916.

Edward J. Crummey, for the Commission.

Charles L. Woody, for The Brooklyn Heights Railroad Company.

James G. Purdy and *James B. Fisher*, for the Flatbush Taxpayers' Association.

In the Matter of the Hearing on the Motion of the Commission Concerning the Regulations, Practices and Equipment of THE LONG ISLAND RAILROAD COMPANY within the First District, in Regard to the Operation of Steam Locomotives on its Atlantic Division.

CASE NO. 1878: ORDERS ENTERED JULY 13 AND SEPTEMBER 14, 1916

STEAM OPERATION—RAILROAD CORPORATIONS—ORDER PROHIBITING STEAM OPERATION IN ATLANTIC AVENUE TUNNELS AMENDED.—The first Order amended an Order entered December 1, 1915, as amended June 8, 1916, prohibiting the operation of steam trains by The Long Island Railroad Company in the Atlantic Division tunnels after July 15, 1916, so as to suspend the operation of said Order from July 15, 1916 to September 15, 1916. It was provided, however, (1) that no steam locomotives should be operated through the tunnels except (a) between the hours of 12 midnight and 6 A. M., and (b) the light engine or drill engine movements designated Nos. 5, 6, 7 and 8, in the communication dated July 10, 1916, received from C. L. Addison, Assistant to the President of the Company; (2) that the Company should file with the Commission each week a statement showing each steam locomotive movement for each day of the preceding week.

The Order entered September 14, 1916, further amended said Order of December 1, 1915, as amended, so as to except from the prohibition thereof, in addition to the engines designated in the letter of Mr. Addison, above mentioned, steam locomotives operated between the hours of 12 midnight and 7 A. M., and one light road engine movement in an easterly direction after 7 A. M.

Hearings closed September 14, 1916.

Arthur DuBois, for the Commission.

C. L. Addison, for The Long Island Railroad Company.

In the Matter of the Hearing on the Motion of the Commission on the Question of Whether THE LONG ISLAND RAILROAD COMPANY Should be Directed to Construct and Maintain a Passenger Station on its Far Rockaway Division at or near Frank Avenue, in the Borough of Queens, City of New York.

CASE NO. 2103: ORDERS ENTERED JULY 14 AND 31, 1916

STATIONS—RAILROAD CORPORATIONS—STATION STOP ON L. I. R. R. AT FRANK AVENUE REQUIRED.—The Order of July 14, 1916, as amended July 31, 1916, required The Long Island Railroad Company to establish and maintain a station stop at Frank Avenue (Beach 44th Street) and on and after August 1, 1916, until September 15, 1916, and thereafter from June 15 to September 15 of every year to stop for the purpose of taking on and discharging passengers at Frank Avenue, the following trains:

<i>Westbound</i>	
Train No.	About
1011	7:47 A.M.
1213	7:59 A.M.
1013	8:14 A.M.
1219	8:30 A.M.
1021	10:57 A.M.
3225	6:59 P.M. (Sunday only)
3083	7:00 P.M. (Sunday only)

Train No.	<i>Eastbound</i>	About
1262		1:50 P.M. (Saturday only)
1074		2:06 P.M. (Saturday only)
1274		5:32 P.M.
1278		5:50 P.M.
1082		5:52 P.M.
1282		6:14 P.M.
1086		6:22 P.M.
1284		6:34 P.M.
1290		7:05 P.M.
1090		7:13 P.M.
3068		11:44 A.M. (Sunday only)

Hearings closed June 12, 1916.

Arthur DuBois, for the Commission.

Joseph F. Keany and *J. A. McCrea* for The Long Island Railroad Co.

Richard H. Noland, for Half-Way House Corporation.

George W. Foren, for the Complainants.

In the Matter of the Hearing on the Motion of the Commission as to the Regulations, Practices, Equipment, Appliances and Service of the NASSAU ELECTRIC RAILROAD COMPANY on the West End Line at the Intersection of 86th Street and Bay 19th Street, in the Borough of Brooklyn.

CASE No. 585: ORDER ENTERED JULY 20, 1916

GRADE CROSSINGS—SAFETY PRECAUTIONS—GATES AT CROSSING—PREVIOUS ORDER ABROGATED.—The Order abrogated an Order entered on June 19, 1908, pursuant to an Opinion adopted on that day, directing the Nassau Electric Railroad Company to install and maintain safety gates at the 86th Street crossing of the West End Line.

(For the Opinion referred to above, see 1 P. S. C. R. [1st Dist. N. Y.] 217).

In the Matter of the Hearing on the Motion of the Commission Concerning the Regulations, Practices and Service of the SECOND AVENUE RAILROAD COMPANY IN THE CITY OF NEW YORK and JOHN BEAVER, its Receiver, on the Second Avenue Line and the 86th Street Line, in the Borough of Manhattan, City of New York.

CASE No. 2108: ORDER ENTERED JULY 20, 1916

SERVICE—STREET RAILROAD CORPORATIONS—OPERATION OF 86TH STREET LINE.
—The Order required the operation of the 86th Street Shuttle Line, between East 86th Street and Second Avenue and the 92nd Street Ferry, every day in the week, including Sundays and holidays, between 5:00 A. M. and 12:30 A. M., at least five round trips per hour, and each round trip to be made within 12 minutes.

Hearings closed July 17, 1916.

E. J. Crummey, for the Commission.

Morgan Elliott, for the Yorkville Association.

Maurice Bloch, for the 18th Assembly District.

Mark Goldberg and *Edward V. Gilmore*, for the 18th Assembly District and for Yorkville.

Brainard Tolles, for the Second Avenue Railroad Company in the City of New York.

In the Matter of the Hearing on the Complaint of PHINEAS KENT, JR., *against* the NEW YORK AND QUEENS ELECTRIC LIGHT AND POWER COMPANY on Account of Alleged Overcharge.

CASE NO. 2122: RESOLUTION ADOPTED JULY 20, 1916

RATES AND CHARGES—ELECTRICAL CORPORATIONS—OVERCHARGE DETERMINED.
The Resolution declared that in the opinion of the Commission the charge of \$62.76 for electricity furnished to the complainant from March 16, 1916, to April 14, 1916, was unreasonable and that the just and reasonable charge should have been not more than \$2.00.

Hearing closed July 18, 1916.

H. H. Whitman, for the Commission.

Shearman & Sterling, by *John A. Garver* and *P. F. W. Ruther* for the New York and Queens Electric Light and Power Co.

In the Matter of Requiring Certain ELECTRIC RAILROAD CORPORATIONS to File Monthly Reports of Coney Island Traffic on Elevated Lines.

CASE NO. 1334: ORDER ENTERED JULY 27, 1916

REPORTS—RAPID TRANSIT CORPORATIONS—REPORT OF CONEY ISLAND TRAFFIC—ABROGATION OF PREVIOUS ORDER.—The Order abrogated an order entered July 2, 1912, directing the Brooklyn Union Elevated Railroad Company and the Sea Beach Railway Company (predecessors of the New York Consolidated Railroad Company), the South Brooklyn Railway Company and the Nassau Electric Railroad Company to file monthly reports of the Coney Island traffic on elevated lines.

(For abstracts of the Order of July 2, 1912, and the Order entered on March 31, 1911, modified thereby, see 3 P. S. C. R. [1st Dist. N. Y.] 749 and 680, respectively).

In the Matter of the Hearing on Motion of the Commission as to the Report by Railroad Engineers as to the Condition of Elevated Structures and Bridges used by all Railroad and Street Railroad Companies in the First District.

CASE NO. 2095: ORDER ENTERED JULY 27, 1916

INSPECTIONS—ELEVATED STRUCTURES—PERIODICAL INSPECTIONS REQUIRED.—The Order required the Interborough Rapid Transit Company, the New York Consolidated Railroad Company, the Nassau Electric Railroad Company, the South Brooklyn Railway Company, The New York Central Railroad Company, The New York, New Haven and Hartford Railroad Company and The Long Island Railroad Company to make periodical inspections of their elevated structures and bridges within the First District and to file with the Commission within 30 days after the expiration of each calendar year a report of its findings.

Hearings closed May 22, 1916.

H. M. Chamberlain, for the Commission.

L. J. Carruthers, for The Long Island Railroad Co.

James L. Quackenbush by *A. G. Peacock*, for the Interborough Rapid Transit Company.

A. M. Williams, for the New York Consolidated Railroad Co., South Brooklyn Railway Co. and Nassau Electric Railroad Co.

George H. Walker and *Paul Jones* for The New York Central Railroad Co.

In the Matter of the Hearing on the Motion of the Commission, Concerning the Service of the LONG ISLAND ELECTRIC RAILWAY COMPANY on its Jamaica—Far Rockaway Division.

CASE NO. 2105: ORDER ENTERED JULY 27, 1916

SERVICE—STREET RAILROAD CORPORATIONS—THROUGH OPERATION TO HOOK CREEK—PROCEEDING DISCONTINUED.—The Order discontinued without prejudice the proceeding herein started with a view of determining whether the cars terminating at Farmers Avenue and at Dooley's Switch should be operated through to Hook Creek.

Hearings closed July 10, 1916.

E. M. Deegan, for the Commission.

James L. Quackenbush, by *Arthur G. Peacock*; and *W. O. Wood*, for Long Island Electric Railway Company.

In the Matter of the Application of THE NEW YORK AND QUEENS COUNTY RAILWAY COMPANY for Permission to Suspend Operation of Cars on the Flushing Meadows between Summit Avenue and Jackson Avenue in the Second Ward of the Borough of Queens.

CASE NO. 1996: ORDER ENTERED JULY 31, 1916

SUSPENSION OF OPERATION—STREET RAILROAD CORPORATIONS—APPLICATION GRANTED.—The Order granted the application of The New York and Queens County Railway Company to suspend the operation of cars on Flushing Meadows between Summit Avenue and Jackson Avenue, in the Borough of Queens, for the time required for filling in said Meadows not exceeding one year from July 29, 1916, upon the following conditions: (a) that the Company would construct and operate a single track temporary extension or connection from the terminus of the Corona Line at Summit Avenue, through Summit Avenue and Pell Street to Jackson Avenue, if a temporary permit for the same could be obtained from the Board of Estimate and Apportionment of the City of New York; (b) that the Company would make due application to the City of New York for such temporary permit; (c) that upon the granting of such temporary permit the Company would immediately commence construction of such extension and complete the same not later than November 15, 1916; (d) that immediately upon completion the Company would commence the operation of the extension and continue such operation until such time as operation of cars across the Flushing Meadows should be resumed.

Hearings closed July 26, 1916.

H. M. Chamberlain, for the Commission.

James L. Quackenbush, *Arthur G. Peacock* and *W. O. Wood* (President), for the applicant company.

C. B. Moore and *Maurice E. Connelly*, for the Borough of Queens.

J. S. Eadie, for the Flushing Association.

M. J. Cavanagh, for the Civic Association of Elmhurst.

Lamar Hardy, by *Vincent Victory*, for the City of New York.

In the Matter of the Hearing on the Motion of the Commission to Determine Whether an Order Should be Made Requiring the UNION RAILWAY COMPANY OF NEW YORK CITY to Rebuild, Repair or Alter its Tracks or Rails on Jerome Avenue, between Kingsbridge Road and Woodlawn Avenue, in the Borough of The Bronx, City of New York.

CASE NO. 2124: ORDER ENTERED AUGUST 3, 1916

TRACKS—STREET RAILROAD CORPORATIONS—RERAILING ON JEROME AND

WOODLAWN AVENUES REQUIRED.—The Order required the Union Railway Company of New York City to rebuild with new rails both tracks on Jerome Avenue between Kingsbridge Road and Woodlawn Avenue, in the Borough of The Bronx, City of New York.

Hearings closed July 26, 1916.

Arthur DuBois, for the Commission.

E. S. Martin, for Union Railway Company of New York City.

In the Matter of the Complaint of SARAH EMMONS *against* NASSAU ELECTRIC RAILROAD COMPANY—"Failure to stop cars at north end of bridge crossing Coney Island Creek."

CASE NO. 729: ORDER ENTERED AUGUST 8, 1916

SERVICE—STREET RAILROAD CORPORATIONS—STOPPING POINT ON BRIDGE OVER CONEY ISLAND CREEK—PREVIOUS ORDER ABROGATED.—The Order abrogated an order entered September 22, 1908, as amended August 6, 1909, requiring the Nassau Electric Railroad Company to fix and maintain a safe and convenient stopping point on the north side of the bridge crossing Coney Island Creek. (See 3 P. S. C. R. [1st Dist. N. Y.] 581).

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- In the Matter of the Hearing on Motion of the Commission Regarding Complaint of JOSEPH ROLLINS *against* the NASSAU ELECTRIC RAILROAD COMPANY—Lack of Shelter at Bay 35th Street Station on West End Line.

CASE NO. 1457: ORDER ENTERED AUGUST 8, 1916

STATION FACILITIES—STREET RAILROAD CORPORATIONS—WAITING FACILITIES ON WEST END LINE AT BAY 35TH STREET—PREVIOUS ORDER AMENDED.—The Order amended an Order entered herein on December 28, 1915, by abrogating paragraph (2) of said Order, which required that a waiting car be provided as a waiting room at Bay 35th Street station of the West End Line of the Nassau Electric Railroad Company.

(For a digest of the Order of December 28, 1915, see 6 P. S. C. R. [1st Dist. N. Y.] 465.)

In the Matter of the Hearing on Motion of the Commission to Determine Whether an Order Should be Made Requiring the THIRD AVENUE RAILWAY COMPANY to Rebuild, Repair or Alter its track or Rails on Amsterdam Avenue from Man-

hattan Street to the Terminal Loop at Fort George Avenue and Audubon Avenue.

CASE NO. 2114: ORDERS ENTERED AUGUST 8 AND SEPTEMBER 6, 1916

TRACKS—STREET RAILROAD CORPORATIONS—RERAILING ON AMSTERDAM AVENUE REQUIRED.—The Order of August 8, 1916, as amended on September 6, 1916, required the Third Avenue Railway Company to rebuild with new rails all of its tracks on Amsterdam Avenue, from Manhattan Street to the Terminal Loop at Fort George Avenue and Audubon Avenue, except its tracks (1) between 133rd Street and 135th Street, and (2) north of 187th Street.

Hearings closed July 26, 1916.

Arthur DuBois, for the Commission.

E. S. Martin, for Third Avenue Railway Company.

In the Matter of the Investigation by the Public Service Commission for the First District under Sections 45 and 48 of the Public Service Commissions Law into the General Condition of each and every Common Carrier within the First District, and as to the Manner of Operation and the Adequacy and Safety of Service of such Common Carrier.

CASE NO. 2126: MEMORANDA APPROVED AUGUST 10 AND SEPTEMBER 12, 1916

EMPLOYEES—STREET RAILROAD CORPORATIONS—ARBITRATION OF GRIEVANCES RECOMMENDED.—The memorandum of August 6, 1916, accompanying a communication of the same date transmitted to Governor Charles S. Whitman, set forth the action taken by the Commission to bring about a settlement of the employees of the Third Avenue Railway System. The Memorandum of September 12, 1916, was by the Hon. John Purroy Mitchell, Mayor of the City of New York, and the Hon. Oscar S. Straus, Chairman of the Public Service Commission for the First District, jointly, and recommended that the grievances of the employees of the Interborough Rapid Transit Company be submitted to arbitration and that the strike be declared off.

(For the full text of the Memoranda and the Communication to the Governor, see Annual Report, 1916, Vol. I, p. —.)

In the Matter of the Filing of Information as to the Relation between Common Carriers under the Jurisdiction of the Public Service Commission for the First District and Owners or Holders of their Capital Stock.

CASE NO. 2128: ORDER ENTERED AUGUST 11, 1916

REPORTS—HOLDING CORPORATIONS—REPORTS OF OWNERSHIP OF STOCK OF COMMON CARRIERS REQUIRED.—The Order required persons and corporations owning a majority of the capital stock of common carriers under the jurisdiction of the Commission to file a statement as of June 30, 1916, showing (1) the number of shares held or controlled directly or indirectly, the par value thereof, the date of acquisition and the amount paid therefor; (2) the number and par value of bonds, notes or other evidences of indebtedness of common carriers so held or controlled, giving for each class of indebtedness a brief description as to term, rate of interest, security and the amount paid therefor; (3) the amount owing by such holding company to each common carrier with a brief description of obligation; (4) the par value of stock issues or evidences of indebtedness issued for collateral securities or evidences of indebtedness of common carriers and the amount received therefor; (5) the names and office addresses of the officers and directors. Railroad, street railroad, gas and electrical corporations which were required to file with the Commission annual reports as operating or lessor companies, to be excepted from the provisions of the Order.

In the Matter of the Hearing on the Motion of the Commission on the Question of Improvement in and Addition to the Service and Equipment of the METROPOLITAN STREET RAILWAY COMPANY and ADRIAN H. JOLINE and DOUGLAS ROBINSON, its Receivers; THE THIRD AVENUE RAILROAD COMPANY and FREDERICK W. WHITRIDGE, its Receiver; THE FORTY-SECOND STREET, MANHATTANVILLE AND ST. NICHOLAS AVENUE RAILROAD COMPANY and FREDERICK W. WHITRIDGE, its Receiver; THE DRY DOCK, EAST BROADWAY AND BATTERY RAILROAD COMPANY and FREDERICK W. WHITRIDGE, its Receiver; UNION RAILWAY COMPANY and FREDERICK W. WHITRIDGE, its Receiver; THE CENTRAL PARK, NORTH AND EAST RIVER RAILROAD COMPANY; SECOND AVENUE RAILROAD COMPANY and GEORGE W. LINCH, its Receiver; 28TH AND 29TH STREETS CROSSTOWN RAILROAD COMPANY and JOSEPH B. MAYER, its Receiver; NEW YORK CITY INTERBOROUGH RAILWAY COMPANY; THE WESTCHESTER ELECTRIC RAILROAD COMPANY and J. ADDISON YOUNG, its Receiver; THE SOUTHERN BOULEVARD RAILROAD COMPANY; PELHAM PARK RAILROAD COMPANY; CITY ISLAND RAILROAD COMPANY, and KINGSBRIDGE RAILWAY COMPANY, in Respect to Fenders and Wheel Guards and Safety Devices used in

Connection therewith on Surface Cars Operated in the
Boroughs of Manhattan and The Bronx, City of New York.

CASE No. 1047: RESOLUTION ADOPTED AUGUST 21, 1916

WHEELGUARDS—STREET RAILROAD CORPORATIONS—IMPROVEMENT OF WHEELGUARD APPROVED.—The Resolution approved the application of the New York Railways Company for permission to improve its wheelguards by installing an additional slat on the gates of said wheelguards as shown on a blue print entitled "Arrangement showing Proposed Additional Wooden Slat on Gates for Paramenter Wheel Guards, Sheet No. 31118-A."

In the Matter of the Hearing on Motion of the Commission Concerning the Condition of THE LONG ISLAND RAILROAD COMPANY'S Stations at Hammels, Holland, Steeplechase, Seaside and Rockaway Park on the Rockaway Beach Division.

CASE No. 2119: ORDER ENTERED AUGUST 30, 1916

STATIONS—RAILROAD COMPANIES—IMPROVEMENTS AT STATIONS OF L. I. R. Co.—PROCEEDING DISCONTINUED.—The Order discontinued the proceeding herein without prejudice upon the receipt of a communication from C. L. Addison, Assistant to the President of the Company, setting forth the plans for the improvement of the stations of the Rockaway Beach Division.

Hearings closed August 9, 1916.

E. J. Crummey, for the Commission.

C. L. Addison, for The Long Island Railroad Co.

Thorndike C. McKinney, President of the Rockaway Board of Trade.

C. Davies, President of the Rockaway Park Citizens' Association.

In the Matter of the Application of NASSAU ELECTRIC RAILROAD COMPANY for Approval of Temporary Rerouting a Portion of the Fifteenth Street Line.

CASE No. 2139: MOTION ADOPTED SEPTEMBER 6, 1916

ROUTING OF CARS—STREET RAILROAD CORPORATIONS—REROUTING OF FIFTEENTH STREET LINE APPROVED.—The motion adopted approved the application of the Nassau Electric Railroad Company for permission to reroute the Fifteenth Street line through Hamilton Avenue, West Ninth Street and Prospect Park West to Fifteenth Street, instead of through Hamilton Avenue to Fifteenth Street, subject to the condition that the Company immediately file a supplement to its tariff schedule, showing such change of route.

In the Matter of the Hearing on the Motion of the Commission Concerning the Regulations and Practices of the INTERBOROUGH RAPID TRANSIT COMPANY, the NEW YORK CONSOLIDATED RAILROAD COMPANY, the NASSAU ELECTRIC RAILROAD COMPANY, and the SOUTH BROOKLYN RAILWAY COMPANY, in Respect to the Carrying of Bundles, Newspapers, Baggage or Other Property by Passengers on Elevated and Subway Lines.

CASE NO. 1952: ORDER ENTERED SEPTEMBER 21, 1916

PARCEL TRANSPORTATION—RAPID TRANSIT CORPORATIONS—RULES FOR TRANSPORTATION OF BUNDLES OF NEWSPAPERS AMENDED.—The Order granted the application of the Publishers' Association for an amendment of an Order entered August 24, 1915, relating to badges issued to newspaper carriers by the Interborough Rapid Transit Company, so as to substitute for the provision contained therein, the following:

"For the information of all employees: Badges will be issued to the newspaper carriers, which must be worn by them on the left side of their coat in an exposed position. The badges are issued in accordance with lists on file in the office of the Publishers' Association of New York City, the Interborough Rapid Transit Company and the Public Service Commission for the First District."

Requests for the amendment of other provisions of the Order of August 24, 1915, were denied.

(For the full text of the earlier Order see 6 P. S. C. R. [1st Dist. N. Y.] 427).

Hearings closed November 9, 1915.

E. J. Crummev, for the Commission.

James L. Quackenbush, by *Arthur G. Peacock*, for the Interborough Rapid Transit Company.

Victor F. Ridder, for the Publishers' Association of New York.

M. B. Hoffman, for the New York Consolidated Railroad Company, the Nassau Electric Railroad Company and the South Brooklyn Railway Company.

L. A. Gelb, in person.

In the Matter of New Passenger Tariffs of the NEW YORK CONSOLIDATED RAILROAD COMPANY containing Changes in Transportation Privileges.

CASE NO. 2146: ORDERS ENTERED SEPTEMBER 25 AND OCTOBER 11, 1916

TARIFF SCHEDULES—RAPID TRANSIT CORPORATIONS—SUSPENSION OF TARIFF SCHEDULE PENDING HEARING.—The first Order directed a hearing without

formal pleading on the rates and practices of the New York Consolidated Railroad Company and suspended, pending said hearing and until December 1, 1916, the operation of the tariff schedule filed by said company described as follows: "P. S. C.—1 N. Y.—No. 4, Local and Joint Passenger Tariff Publishing Fares From and to Points in the City of New York, Boroughs of Manhattan, Brooklyn and Queens." The second Order vacated the provision of the previous Order suspending the operation of the Tariff Schedule.

Hearings closed October 2, 1916.

Arthur DuBois, for the Commission.

D. A. Marsh and *Geo. D. Yeomans* for the New York Consolidated Railroad Co., New York Municipal Railway Corporation and The Coney Island and Brooklyn Railroad Co.

J. R. Abarbanell, for the Coney Island Board of Trade and the Van Sicken Taxpayers' Association.

A. Sidney Galitzka, for *S. W. Gompertz*.

In the Matter of the Hearing on the Motion of the Commission on the Question of Alterations and Changes in the Following Grade Crossings with the Tracks of THE LONG ISLAND RAILROAD COMPANY—Fresh Pond Road and Metropolitan Avenue at Bushwick Junction.

CASE NO. 1261: RESOLUTION ADOPTED SEPTEMBER 28, 1916

GRADE CROSSING ELIMINATION—APPROVAL OF WORK—RESOLUTION FOR ACCOUNTING.—The Resolution approved the work on the elimination of the grade crossings of The Long Island Railroad Company at Fresh Pond Road and Metropolitan Avenue, at Bushwick Junction, and directed a hearing for an accounting between The Long Island Railroad Company and The City of New York.

(For previous actions of the Commission in this Case see 6 P. S. C. R. [1st Dist. N. Y.] 396, 397.)

Arthur DuBois, for the Commission.

Alfred Gardner, for The Long Island Railroad Co.

Lamar Hardy, by *W. J. Clarke*, for The City of New York.

Cullen & Dykman, by *J. A. Dykman*, for The Newtown Gas Co.

In the Matter of the Hearing on the Motion of the Commission on the Question of Gas Pressure Regulations to be Prescribed as to all Gas Companies Furnishing Gas for Consumption in the Borough of Queens.

CASE NO. 1579: ORDER ENTERED SEPTEMBER 28, 1916

GAS PRESSURE—PRESSURE GAUGE TEMPORARILY DISCONTINUED.—The Order authorized the Queens Borough Gas and Electric Company to discontinue the use of the recording pressure gauge located at Newport and Dennison Avenues, Rockaway Beach, Pole No. 31, southeast corner, until May 1, 1917.

(For an Order entered pursuant to an Opinion adopted January 24, 1913, prescribing regulations for gas pressure, see 3 P. S. C. R. [1st Dist. N. Y.] 19).

In the Matter of the Hearing on Motion of the Commission on the Question of Changes in the Regulations, Practices and Service of the NEW YORK CONSOLIDATED RAILROAD COMPANY, NASSAU ELECTRIC RAILROAD COMPANY and SOUTH BROOKLYN RAILWAY COMPANY—Destination Signs in Cars in Service on Elevated Lines.

CASE NO. 1505: ORDERS ENTERED OCTOBER 11 AND 27, 1916

DESTINATION SIGNS—STREET RAILROAD CORPORATIONS—SUSPENSION OF ORDER REQUIRING DESTINATION SIGNS.—The Orders authorized the New York Consolidated Railroad Company to suspend the Order entered herein on July 30, 1914, as amended September 15, 1914, requiring the display of destination signs, said suspension to be applicable to the New York Consolidated Railroad Company from October 16, 1916, to November 16, 1916, inclusive, and from November 16, 1916, to April 1, 1917, inclusive, and required the Company under the Order of October 27, 1916, to use on trains destined for Sheepshead Bay, Kings Highway side window signs, with front and rear dash signs indicating Sheepshead Bay as the destination of the train.

In the Matter of the Application of the CITY ISLAND MOTOR BUS CO., INC., for a Certificate of Public Convenience and Necessity, and for Permission to Exercise a Franchise under Section 53 of the Public Service Commissions Law.

CASE NO. 2143: RESOLUTION ADOPTED OCTOBER 11, 1916.

ORDER ENTERED OCTOBER 11, 1916

CERTIFICATE OF CONVENIENCE AND NECESSITY—MOTOR BUS CORPORATIONS—RESOLUTION GRANTING CERTIFICATE.—The Resolution granted the Company a certificate of convenience and necessity for the operation of motor buses on the following route: "From the southerly end of City Island along City Island avenue over the City Island bridge and along City Island road to Pelham road, to Eastern boulevard, to Fordham road or Bronx and Pelham parkway, to Boston road, to 177th street."

The order entered October 11, 1916, approved the exercise of the franchise obtained from the Board of Estimate and Apportionment of the City of New York for the above route.

Hearings closed October 9, 1916.

James B. Walker and *Arthur Du Bois*, for the Commission.

Lamar Hardy, by *Judson Hyatt*, for the City of New York.

Sayers Brothers, by *William L. Sayers*, and *H. Schieffelin Sayers*, for the applicant company.

In the Matter of the Application of INTERBOROUGH RAPID TRANSIT COMPANY for Authority to Execute its Proposed "First and Refunding Mortgage," Securing its Gold Bonds, and for the Consent of the Commission to the Issuance of Certain Bonds thereunder.

CASE NO. 1614: MOTION ADOPTED OCTOBER 19, 1916

BOND ISSUE—RAPID TRANSIT CORPORATIONS—REPORT OF RECEIPTS AND DISBURSEMENTS.—The motion adopted directed the Secretary to transmit a communication in the following form to the Interborough Rapid Transit Company:

In addition to the monthly report of sales of bonds rendered in accordance with the terms of the order in Case No. 1614, a comprehensive statement will be required of cash available for the purposes stipulated in the order. The report should contain the information indicated in the following outline:

1. Available balance at beginning of month.
2. Proceeds from bond sales (if any).
3. Expenditures for purposes authorized.
4. Adjustments (debit and credit).
5. Available balance at end of month.
6. Add—Miscellaneous receipts and suspense items (to be specified).
7. Deduct—Miscellaneous disbursements and suspense items (to be specified).
8. Cash balance at end of month.

In explanation of the above outline, it is intended that items 1 to 5 inclusive shall relate exclusively to the purposes enumerated in the order in Case No. 1614 (Sec. 5, Par. 1, Items 1 to 7), a copy of which is enclosed. Items 6 to 8 inclusive shall relate to receipts and payments temporarily included in the account, which make up the cash balance. Should, however, audited vouchers for expenditures be included under item 3, it will be necessary to show the unpaid vouchers at the end of each month under item 6. The available balances at the beginning and end of the month (items 1 and 5) are of primary interest, and the remaining items (6 to 8) are of secondary interest, but necessary to a proper audit of the cash balance. It is suggested that the form of report to be submitted show the purposes on the left hand margin or stub, with the eight items as columnar headings and the specifications required under items 6 and 7 as footnotes.

Please furnish statements as outlined commencing with June 30, 1916.

(For previous Order entered herein on March 20, 1913, see *Re* \$160,957,000 Bond Issue by Interborough R. T. Co., 4 P. S. C. R. [1st Dist. N. Y.] 105).

In the Matter of the Complaint of ST. ALBANS IMPROVEMENT ASSOCIATION *against* THE LONG ISLAND RAILROAD COMPANY.—Stopping of Additional Trains at St. Albans Station, and Union Hall Street Station, Borough of Queens, City of New York.

CASE NO. 2135: ORDERS ENTERED OCTOBER 26 AND NOVEMBER 6, 1916

SERVICE—RAILROAD CORPORATIONS—ADDITIONAL SERVICE AT ST. ALBANS AND UNION HALL STREET STATIONS REQUIRED.—The Order of October 26, 1916, amended on November 6, 1916, required The Long Island Railroad Company (1) to stop daily except Saturdays and Sundays, on and after November 1, 1916, at the St. Albans Station on the Montauk Division, eastbound train No. 116, scheduled to leave Jamaica Station at or about 5:39 P. M., said train to make connections at Jamaica Station at or about 5:19 P. M., and the train scheduled to leave Flatbush Avenue Station at or about 5:17 P. M.; and (2) to stop daily except Sundays, on and after November 1, 1916, at the Union Hall Street Station on the Montauk Division, train No. 59, scheduled to leave Patchogue at or about 10:42 A. M. and scheduled to arrive at Jamaica Station at or about 1:01 P. M.

Hearings closed October 2, 1916.

H. M. Chamberlain, for the Commission.

C. L. Addison, for The Long Island Railroad Company.

William Rylance, for the St. Albans Improvement Association.

In the Matter of the Hearing on the Complaint of GUS JOHNSON and others *against* the WOODHAVEN GAS LIGHT COMPANY, with Regard to the Extension of Mains and the Installation of Service Pipes.

CASE NO. 2145: ORDER ENTERED OCTOBER 26, 1916

EXTENSIONS—GAS CORPORATIONS—EXTENSION REQUIRED.—The Order directed the Woodhaven Gas Light Company: (1) to satisfy the complaint of George C. Dickel by extending its gas mains and services so as to serve with gas 28 houses erected or in the course of erection on Rector Street north of Jamaica Avenue, in the Fourth Ward of the Borough of Queens; (2) to dismiss without prejudice the complaint of John J. Comer; and (3) to discontinue the complaints of Gus Johnson and Carl Schwarze.

Hearings closed October 9, 1916.

Edward J. Crummey, for the Commission.

Cullen & Dykman, by *J. A. Dykman*, for the Woodhaven Gas Light Company.

Daniel W. Wittpenn, John J. Comer, Ralph Hendrickson, J. V. Hendrickson, and others, for complainants.

In the Matter of the Investigation Concerning the Transmission and Distribution of Electricity at and near Canarsie.

CASE NO. 2153: ORDER ENTERED NOVEMBER 1, 1916

INVESTIGATION—STREET RAILROAD CORPORATIONS—TRANSMISSION OF ELECTRIC CURRENT AT CANARSIE—PROCEEDING DISCONTINUED.—The Order discontinued the proceeding herein.

Hearings closed October 23, 1916.

H. M. Chamberlain, for the Commission.

M. B. Hoffman, for The Brooklyn Heights Railroad Company.

In the Matter of the Application of the UNION RAILWAY COMPANY OF NEW YORK CITY for Permission to Temporarily Suspend the Operation of Service on Morris Park Avenue from Radcliffe Avenue to Williamsbridge Road, in the Borough of The Bronx, City of New York.

CASE NO. 2158: RESOLUTION ADOPTED NOVEMBER 6, 1916

SUSPENSION OF OPERATION—STREET RAILROAD CORPORATIONS—APPLICATION GRANTED.—The Resolution granted the Union Railway Company of New York City permission to suspend operation of cars on Morris Park Avenue from Radcliffe Avenue to Williamsbridge Road, in the Borough of The Bronx, during the period of sewer construction and until the Commission should otherwise direct, and required the Company to file a supplement to its tariff schedule showing such change in operation.

In the Matter of New Passenger Tariff of the SOUTH BROOKLYN RAILWAY COMPANY Containing Certain Changes in Transportation Privileges.

CASE NO. 2159: ORDERS ENTERED NOVEMBER 6 AND NOVEMBER 16, 1916

TARIFF SCHEDULES—STREET RAILROAD CORPORATIONS—SUSPENSION OF TARIFF SCHEDULES—VACATION OF SUSPENSION ORDER.—The first Order directed a

hearing without formal pleading on the rates and practices of the South Brooklyn Railway Company and suspended, pending such hearing and until January 15, 1917, the tariff schedule filed by the Company and described as follows: "P. S. C.—1 N. Y. No. 5, Local and Joint Passenger Tariff Publishing Fares From and To Points in the City of New York, Boroughs of Manhattan, Brooklyn and Queens." The second Order vacated the provision of the Order of November 6, 1916, suspending the tariff schedule above described, on condition that the Company should continue to provide free transfers between the Nortons Point Line and the Culver Line (Fifth Ave.—P. P. and C. I. Div.) and that the time limited for the use of such transfers should be sufficient to enable such passengers to walk the distance between the Culver Terminal and the West End Terminal at Coney Island.

Hearings closed November 13, 1916.

H. M. Chamberlain, for the Commission.

M. B. Hoffman, for the South Brooklyn Railway Co.

Martin A. Blutman, *Abraham Marco* and *Morris E. Bungard*, for the Civic Alliance of Coney Island.

In the Matter of the Hearing on the Motion of the Commission on the Question of Regulations to be Prescribed as to all Public Service Corporations within the Jurisdiction of the Public Service Commission for the First District with Reference to Safeguarding and Protecting Employees from Injury by High Tension Electrical Apparatus or Other Dangerous Conditions.

CASE NO. 1628: ORDER ENTERED NOVEMBER 9, 1916

SAFETY APPLIANCES—PROTECTION OF EMPLOYEES FROM INJURIES—RULES AND REGULATIONS AS TO HANDLING HIGH TENSION APPARATUS—PREVIOUS ORDER AMENDED.—The Order amended an Order entered April 25, 1913, as amended by Orders entered June 27, 1913; January 14, 1914, and December 7, 1915, requiring every public service corporation subject to the jurisdiction of the Commission and using high tension electrical apparatus, to safeguard employees from injury, by suspending paragraph 8 of said Order, in so far as it affected the power station of the New York Railways Company located at Ninety-sixth Street, as follows:

"8. All stop-valves on steam boilers shall be of the automatic self closing type, or shall be equipped with remote control devices whereby they may be closed from distant points."

(For references to the original Order and amendments thereto, see 6 P. S. C. R. [1st Dist. N. Y.] 461.)

In the Matter of the Application of the PENNSYLVANIA TUNNEL AND TERMINAL RAILROAD COMPANY for the Approval by the Public Service Commission for the First District of an Agreement between that Railroad Company and the Pennsylvania Railroad Company for the Operation of the Railroad and appurtenances of the Tunnel Company by the Pennsylvania Railroad Company from the first day of December, 1916, until the first day of November, 1917.

CASE NO. 2125: RESOLUTION ADOPTED NOVEMBER 16, 1916

CONTRACTS AND LEASES—RAILROAD AND RAPID TRANSIT CORPORATIONS—OPERATING AGREEMENT APPROVED.—The Resolution approved an agreement dated October 25, 1916, for the operation of the rapid transit railroad of the Pennsylvania Tunnel and Terminal Railroad Company by the Pennsylvania Railroad Company as operating agent, for a period beginning December 1, 1916, and ending October 31, 1917.

In the Matter of the Application of THE STATEN ISLAND RAPID TRANSIT RAILWAY COMPANY and THE STATEN ISLAND RAILWAY COMPANY for Approval of an Agreement dated as of July 1, 1916, Providing for the Consolidation of the Operation and Accounts of the Railroads of the parties.

CASE NO. 2154: ORDERS ENTERED NOVEMBER 16 AND DECEMBER 13, 1916

CONTRACTS AND LEASES—RAILROAD CORPORATIONS—OPERATING AGREEMENT APPROVED.—The Order of November 16, 1916, as amended on December 13, 1916, approved an agreement for the operation of the railroad of The Staten Island Railway Company by The Staten Island Rapid Transit Railway Company for the period of one year from July 1, 1916, with permission to make a further application for the approval of said agreement beyond July 1, 1917, after service upon all stockholders of said companies of proper notice of such application.

Hearings closed November 13, 1916.

Arthur DuBois, for the Commission.

Cravath and Henderson, by *Stuart McNamara*, for The Staten Island Rapid Transit Railway Company and The Staten Island Railway Company.

George J. Brown, Auditor of the applicant companies.

In the Matter of the Hearing on Motion of the Commission as to Reports by Railroad Engineers upon the Condition of Elevated Structures and Bridges used by Railroad or Street Railroad Companies in the First District.

CASE NO. 2095-A: ORDER ENTERED NOVEMBER 22, 1916

INSPECTIONS—ELEVATED STRUCTURES—PERIODICAL INSPECTIONS REQUIRED.—The Order required all street railroad corporations operating within the First District to make periodical inspections of their elevated structures and bridges within the First District and railroad or street railroad companies operating continuous elevated structures of more than one-half mile in length to file within 30 days after the expiration of each calendar year, a report of their findings, and companies operating elevated structures or bridges of less than one-half mile in length to file within 30 days after the completion of such inspection, a report of their findings.

Hearings closed October 23, 1916.

Arthur DuBois, for the Commission.

James L. Quackenbush by *Arthur G. Peacock* for The Brooklyn and North River Railroad Co., Interborough Rapid Transit Co., Long Island Electric Railway Co., The New York and Long Island Traction Co., New York & Queens County Railway Co., New York Railways Co., Pelham Park and City Island Railway Co., Inc.

George H. Walker, for The New York Central Railroad Co.

S. W. Huff, for the Brooklyn Rapid Transit Co.

C. L. Addison, for The Long Island Railroad Co. and Long Island Electric Railway Co.

In the Matter of the Hearing on Motion of the Commission as to Regulations and Requirements Governing the Installation of Electrical Services in Buildings and Materials Used in Connection therewith.

CASE NO. 2115: ORDER ENTERED NOVEMBER 22, 1916

METERS AND SERVICES—ELECTRICAL CORPORATIONS—RULES GOVERNING INSTALLATIONS AND TESTS.—The Order prescribed the following rules and regulations governing the installation of services and meters for all electrical corporations within the jurisdiction of the Commission:

A. No electrical corporation furnishing electrical energy within the jurisdiction of this Commission shall hereafter install or put in use on any service to a consumer's premises any appliance, device, switch, fitting, or instrument transformer, the type of which shall not have been approved by this Commission.

B. A service, for the purposes of this Order, is defined as that part of the circuit, and all equipment pertaining thereto, between a main of the elec-

trical corporation and the consumer's circuit. A service transformer secondary is considered a main.

Who may make application

Any electrical corporation or manufacturer may make application for test and approval of service equipment that is intended to be used within the jurisdiction of this Commission.

How Directed

The application shall be directed to the Secretary of the Commission and notice of the time and place of the tests shall be published by the Commission on the weekly calendar of hearings.

Form of application

The application shall state

- (a) The name and address of the applicant;
- (b) The name and address of the manufacturer;
- (c) The manufacturer's type designation, and a brief description of the article and its use;
- (d) The application, when possible, shall be accompanied by a catalogue or other descriptive matter.

Shipment of samples

Directions for the shipment of samples will be furnished the applicant by the Commission.

All shipment charges shall be prepaid by the applicant.

Approval Limit

The approval of a device for one current or voltage rating does not approve the device for any other current or voltage rating; each is considered and approved or rejected separately.

Modifications

The Commission shall be advised of each and every modification of service equipment used or intended for use within its jurisdiction. The necessity or desirability of a retest will be determined by the character of the modification.

Manufacturer's Fee

A fee determined as per the following schedule will be charged a manufacturer for each complete test:

Schedule of Fees charged Manufacturers.

Conduit, metal moulding and fittings, each type.....	\$2.00
Armored, lead covered, insulated cables or wires.....	2.00
Fuses, fuse blocks, insulators and ground clamps.....	2.50
Metal boxes and cabinets, each size.....	2.50
Knife Switches	4.00
Circuit breakers	5.00
Potential transformers, 2200 volts or less.....	6.00
" " 6600 "	8.00
Current transformers, 250 amperes or less.....	8.00
" " 300 to 450 amperes.....	12.00
" " 500 to 800 "	15.00
" " 1000 amperes	17.00

Protective devices, testing combinations, miscellaneous equipment or service equipment with an ampere capacity in excess of 1000 amperes or a voltage rating in excess of 6,600 volts will be charged at the rate of \$1.00 per hour per man for the time required to determine its serviceability, the minimum charge to be \$3.00 and the maximum charge not to exceed \$50.00.

Whenever service equipment is submitted so that it is represented in more than three sizes or ranges and it is found that tests of each range or size are not necessary to determine the serviceability of the type, the fee then charged will be as per schedule for each device tested and for each device in addition to those tested only \$1.00 per device will be charged.

Photographs

Whenever it is impossible for the applicant to furnish sufficient descriptive matter with the application, it will then be necessary to submit two photo-

graphs—one view of the exterior, and one of the interior. One photograph will be accepted when the article has no removable housing. Each photograph to be 8 x 10 inches in size.

Destruction of Samples.

If samples are damaged due to tests, the loss so incurred will be borne by the applicant.

The Commission will, when it deems necessary, retain one of the samples submitted.

Service in General

1. For direct or alternating current circuits of 600 volts or less, all conductors from the point where they enter the building and to the consumer's metered circuit shall be protected throughout by installation in metal conduit or other approved duct or supported in an approved manner.

2. All service wire and cable joints must be soldered and covered with an insulation equal to that on the conductors. All joints shall be soldered unless made with some form of approved splicing device. All service equipment shall be mechanically secured in position.

3. Metal conduits containing service wires must be insulated from the metal conduit, metal moulding, or armored cable system within the building and all metal work on or in the building, or they must have the metal of the conduit permanently and effectually grounded. The ground connection to be independent of and in addition to any other ground wire on metal conduit, metal moulding or armored cable system within the building.

Overhead Services

1. Wires and cables, when they enter buildings as services, shall have drip loops outside, and the entrance holes through which they enter shall be bushed with non-combustible, non-absorptive insulating tubes inclined upwards toward the inside, or the service wires may be brought into buildings through a single iron conduit, in which case the conduit will be equipped with an approved service head. The inner end of the conduit system shall extend to the service cut-out cabinet or switch-board.

2. Where a row of separate buildings are to be supplied from an overhead main, one service cable may be run from the main to the buildings and from the first attachment to a building; a sub-service main may be extended in conduit along the outside of the buildings. One main service cable shall supply not more than five buildings except by special permission of the Commission.

3. Service wires must be at least #10 B. & S. Gauge, and if No. 6 B. & S. or smaller, must consist of multiple conductor cable.

4. Service wires extended on the exterior walls of buildings shall be run in approved conduit or supported on petticoat insulators of an approved type, placed not more than fifteen feet apart.

5. Wires must be at least eight feet above the highest point of roofs over which they pass or to which they are attached. All roof supporting structure for wire and cable shall be substantially constructed. Roof lines will be permitted only under special authorization in writing.

Underground Services

1. Underground conductors shall be protected from moisture and mechanical injury when brought into a building.

2. Service tubes shall have the ends so closed as to prevent the entrance of gases into the building.

3. Where a row of separate buildings are to be supplied from an underground main, one service cable may be run from the main to a building and enter as a service, and from this point a sub-service main may be extended underground outside the buildings, or under or along or within the building walls, provided that at all times the cable is protected with two inches of brick or concrete.

Service Switches, Cutouts, Circuit Breakers

1. On constant potential circuits, all service switches must be so arranged

that the fuses will protect, and the opening of the switch will disconnect all of the wires, except permanently grounded wires.

2. When installed without other automatic overload protective devices, automatic overload circuit breakers must have the poles and trip coils so arranged as to afford complete protection against overloads and short circuits. In two or three-phase three-wire circuits and two-phase four-wire circuits there must be a trip coil in each phase. If a circuit breaker is used in place of the switch, it must be so arranged that no one pole can be opened manually without disconnecting all the wires.

3. Switches, cut-outs and circuit breakers must, when placed where exposed to mechanical injury or in the immediate vicinity of easily ignitable stuff or where exposed to inflammable gases, or dust or flyings of combustible materials be mounted in approved cut-out boxes or cabinets, except oil-switches, circuit breakers, and similar devices which have approved castings. All devices which produce or create sparks or arcs must be placed in approved vapor-proof enclosures.

4. Switches, cut-outs and circuit breakers must, when located where exposed to moisture, be mounted in approved cut-out boxes or cabinets.

5. Automatic cut-outs must be placed on all service wires, except permanently grounded wires, either overhead or underground, in the nearest accessible place to the point where they enter the building and inside the walls and arranged to cut off the entire current from the building, except where it is legally required that fire alarms, fire pumps, exit lights, etc. be connected ahead of service switches.

6. Service switches must indicate plainly whether they are open or closed.

7. Single-pole knife switches must never be used as service switches.

8. Single-throw knife-switches must be so placed that gravity will not tend to close them. Double-throw knife-switches may be mounted so that the throw will be either vertical or horizontal as preferred, but if the throw is vertical, a locking device must be provided, so constructed as to insure the blades remaining in the open position when so set. When practicable, service switches must be so wired that the blades will be "dead" when switch is open.

Service Transformers

1. Transformers must not be attached to any building where the potential exceeds 600 volts, except by special permission and when attached to a building must be separated therefrom by substantial supports.

2. Oil transformers must not be placed inside of any building unless in approved transformer vaults and by special permission.

3. Air cooled transformers must not be placed inside of any building unless installed in an approved transformer vault and mounted so that the case shall be at a distance of at least one foot from combustible material or separated therefrom by a slab or panel of non-combustible, non-absorptive, insulating material.

4. Transformers permitted inside of buildings must be located as near as possible to the point at which the primary wires enter the building.

5. Transformer vaults must be constructed of fireproof material. The enclosure shall have no opening to the building, except through an approved tight-fitting fire door. It shall be ventilated in some approved manner, used only to contain transformers and other service equipment and be kept securely locked to prevent access by other than responsible persons. Suitable oil drains and guard sills shall be provided when necessary.

6. Transformers installed in vaults shall have their cases permanently and effectually grounded.

Grounding

1. The grounding of low potential circuits under the following regulations is only allowed when such circuits are so arranged that under normal conditions of service there will be no appreciable passage of current over the ground wire.

2. On underground systems, the neutral wires must be grounded at each distributing box, through the box or on the individual service.

3. Transformer secondaries of distributing systems (except where the primary voltage does not exceed 600 volts) must be grounded provided the maximum difference of potential between the grounded point and any other point in the circuit does not exceed 150 volts and may be grounded when the maximum difference of potential between the grounded point and any other point in the circuit exceeds 150 volts. In either case, the following rules must be complied with:

- (a) The grounding must be made at the neutral point or wire, whenever a neutral point or wire is accessible.
 - (b) When no neutral point or wire is accessible, one side of the secondary circuit must be grounded.
 - (c) The ground connection must be at the transformers or on the individual service and when transformers feed systems with a neutral which is grounded only at the transformer, then the neutral wire must be grounded at least every 500 feet.
4. Ground wires must be copper and never less than No. 6 B. & S. gauge, and have an approved insulating covering.
5. On three-phase systems the ground wire must have a carrying capacity equal to that of any one of the three mains.
6. The cases or frames of transformers used exclusively to supply current to meters must be grounded unless they are installed and guarded in all respects as required for the higher voltage circuit connected to them.

Location of Meters

1. It is recommended that all meters hereafter installed be not less than four (4) feet nor more than seven (7) feet above the floor or suitable platform, and that they be located in the cellar or first floor, as near as possible to the point of service entrance, in a clean, dry, safe place, not subject to great variations in temperature and on a support free from vibration.

2. Where it is necessary to install meters in locations exposed to weather conditions, they shall be protected by suitable boxes or cabinets.

3. Meters should be easily accessible for reading, testing and making necessary adjustments and repairs.

Exceptions to one or more of the rules contained herein can be obtained only by permission of the Commission and any conditions not covered by these rules shall be specially considered and must be approved by the Commission.

When in the judgment of the Commission, after due inspection, any appliances, devices, transformers, switches, meters, or circuits included in service equipment, are unsafe or dangerous to persons or property, the Commission after notifying the corporation and allowing a reasonable time to put same in safe condition shall cause such to be disconnected from the electrical source and seal same to prevent their use. When so disconnected and sealed the electrical corporation shall not cause or permit their employees, to connect or put in use any service equipment until the same has, in the opinion of the Commission, been made safe and the electrical corporation advised in writing to that effect.

Hearings closed August 9, 1916.

Arthur DuBois, for the Commission.

C. G. M. Thomas, for the New York and Queens Electric Light and Power Company.

John W. Lieb, for the New York Edison Company.

Carlton Macy, for the Queens Borough Gas and Electric Company.

In the Matter of the Hearing on Motion of the Commission to
Determine Whether THE NEW YORK STEAM COMPANY is

Violating the Provisions of the Public Service Commissions Law by Advancing the Price of Steam Without Filing in the Manner Prescribed by said Public Service Commissions Law and by the Order of the Commission Made November 24, 1914, in Case No. 1890 a Schedule of Rates Showing Such Advance.

CASE NO. 2151: ORDER ENTERED NOVEMBER 22, 1916

TARIFF SCHEDULES—STEAM CORPORATIONS—FILING OF TARIFF SCHEDULE—PROCEEDING DISCONTINUED.—A tariff schedule having been filed by respondent as required by the P. S. C. Law, an Order was entered directing the discontinuance of the proceeding herein.

Hearings closed November 9, 1916.

Arthur DuBois, for the Commission.

Karl R. Miner and *Charles A. Gilman*, for The New York Steam Co.

Theodore H. Price and *Ernest T. Carter*, Consumers, in person.

In the Matter of the Form of Annual Report for the Year Ending June 30, 1916, to be Filed by OPERATING AND LESSOR STEAM RAILROAD CORPORATIONS.

CASE NO. 2161: RESOLUTIONS ADOPTED NOVEMBER 22, 1916

REPORTS—RAILROAD CORPORATIONS—FORM OF ANNUAL REPORT PRESCRIBED.—The Resolution prescribed the form of annual report for operating and non-operating steam railroad corporations, providing as follows: (1) Operating companies having revenues of more than \$100,000 per annum to report on "State Commission Form A—Steam": Every such railroad corporation engaged in the transportation of persons shall further submit a statement of the number of passenger tickets sold or of cash fares collected at each separate rate during the year at each of its several stations or other places where such transportation is sold; (2) Operating companies having annual revenues below \$100,000 to report on "State Commission Form C—Small Roads"; (3) Non-operating companies owning but not managing a steam railroad to report on abridged form prepared by the Chief Statistician of the Commission for "Lessor Steam Railroad Companies"; (4) That any steam railroad which owns and operates an electric power plant include in its report a description of its plant and a full statement of the operations thereof; (5) That the Secretary of the Commission notify the various steam railroad companies of these requirements and furnish to them the necessary forms; (6) That the Secretary be authorized to request The Long Island Railroad Company to submit an annual report in the same form in which it reports to the Commission for the Second District.

In the Matter of the Joint Petition of KINGS COUNTY ELECTRIC LIGHT AND POWER COMPANY and THE EDISON ELECTRIC ILLUMINATING COMPANY OF BROOKLYN for an Order Authorizing the Issue of \$2,500,000 of Convertible Debentures of the Kings County Electric Light and Power Company and \$1,837,229.40 Demand Notes of Edison Electric Illuminating Company of Brooklyn.

CASE NO. 2152: ORDER ENTERED DECEMBER 4, 1916

BOND ISSUE—ELECTRICAL CORPORATIONS—ISSUE OF \$2,500,000 BONDS AND \$1,900,000 NOTES AUTHORIZED.—The Order authorized the Kings County Electric Light and Power Company to issue \$2,500,000 6 per cent convertible debenture bonds and The Edison Electric Illuminating Company of Brooklyn to issue \$1,900,000 demand promissory notes to the Kings County Electric Light and Power Company for money advanced by the latter, on the following conditions:

First: That an increase of the capital stock of the said Kings County Electric Light and Power Company shall be duly authorized in order to provide for the conversion of the said bonds hereby authorized into said stock by the filing of the necessary certificates as provided by law;

Second: That the said Kings County Electric Light and Power Company shall sell the said bonds hereby authorized so as to net the said company not less than the par or face value of the principal thereof besides interest accrued thereon, and the proceeds thereof shall be applied only to the following purposes, that is to say:

(1) For acquisition of property described as follows, viz., loans by the said Kings County Electric Light and Power Company to the Edison Electric Illuminating Company of Brooklyn evidenced by the demand notes of said last named company herein authorized, the moneys so loaned to be used by the Edison Company only for purposes specified in this order as hereinafter set forth..... \$1,900,000

(2) To or toward reimbursement to the said Kings County Electric Light and Power Company of moneys actually expended from income of said company or from said other moneys in the treasury of said company for acquisition of property and for extension and improvement of its facilities, plant and distributing system between October 1, 1912 and September 30, 1914 600,000

\$2,500,000

Third: That the proceeds of the said \$1,900,000 face value of demand notes of the said Edison Electric Illuminating Company of Brooklyn shall be applied only to the following purposes, that is to say:

(1) For the discharge or refunding of obligations of the company incurred for the acquisition of property or for the construction, completion, extension or improvement of its facilities, plant or distributing system described below or to any renewals thereof or substitutes therefor..... \$600,000

NOTES PAYABLE		
<i>Date</i>	<i>To whom payable</i>	<i>Amount</i>
September 29, 1913	Kings County Trust Company.....	\$100,000 00
" " "	Manufacturers National Bank.....	50,000 00
November 28, "	Peoples Trust Company.....	100,000 00
May 28, 1914	Title Guarantee & Trust Company.....	50,000 00
" " "	" " " ".....	50,000 00
" " "	National City Bank.....	50,000 00
August 25, "	Mechanics Bank—Fulton Branch.....	50,000 00
" 29, "	Brooklyn Trust Company.....	50,000 00
" " "	Franklin Trust Company.....	50,000 00
September 28, 1914	Brooklyn Trust Company.....	50,000 00
Total outstanding September 30, 1914.		\$600,000 00

(2) To or toward reimbursement to said Edison Electric Illuminating Company of Brooklyn of moneys actually expended from income of said company or sold for less than par besides accrued interest. The said bonds shall be offered for subscription at par and accrued interest, first, to the stockholders of said company, and, second, as to any amount not subscribed for by stockholders to the Brooklyn Edison Investment Fund, the same being a fund created and accumulated pursuant to a profit sharing and pension plan of the Edison Electric Illuminating Company of Brooklyn under the charge of "The Trustees of Brooklyn Edison Investment Fund" dated June 20, 1910 as amended December 10, 1910. In case all of this issue of \$2,500,000 of bonds shall not be so subscribed for by the stockholders of said company or by the Brooklyn Edison Investment Fund as aforesaid, then the treasurer of the company shall invite proposals for the purchase of such unsubscribed amount of bonds at not less than par and accrued interest to be publicly advertised once a week for four successive weeks in four daily newspapers published in the City of New York, and said treasurer shall award said bonds to the highest bidder or bidders therefor, said proposals shall be publicly opened by the said treasurer in the presence of the Public Service Commissioners for the First District, or such of them as shall attend, at the time and place of said sale specified in said public advertisement. It shall be a condition of said sale and the advertisement calling for proposals therefor shall so declare that any bidder may bid as to said bonds for all or none at one price or for all or any part at one price or for portions of said bonds at different prices, and any bidder who shall bid for a portion of said bonds may be required to accept a part of the amount bid for by him at the same rate or proportion as may be specified in his bid, and any bid which conflicts with this provision may be rejected; and if the Board of Directors deem it to be for the interest of the company so to do, it may award the bonds to the bidder offering the highest price for all or for a number of said bonds, provided, however, that if the Board of Directors deems it to be in the interest of said company it may reject all bids. Said Board of Directors may prescribe such other conditions incident to and providing for the proposal for the purchase of said bonds as to said Board may seem fit.

Fourth: None of the proceeds of the aforesaid \$2,500,000 of bonds of the Kings County Electric Light and Power Company shall be issued or sold for less than par besides accrued interest. The said bonds shall be offered for subscription at par and accrued interest, first, to the stockholders of said company, and, second, as to any amount not subscribed for by stockholders to the Brooklyn Edison Investment Fund, the same being a fund created and accumulated pursuant to a profit sharing and pension plan of the Edison Electric Illuminating Company of Brooklyn under the charge of "The Trustees of Brooklyn Edison Investment Fund" dated June 20, 1910 as amended December 10, 1910. In case all of this issue of \$2,500,000 of bonds shall not be so subscribed for by the stockholders of said company or by the Brooklyn Edison Investment Fund as aforesaid, then the treasurer of the company shall invite proposals for the purchase of such unsubscribed amount of bonds at not less than par and accrued interest to be publicly advertised once a week for four successive weeks in four daily newspapers published in the City of New York, and said treasurer shall award said bonds to the highest bidder or bidders therefor, said proposals shall be publicly opened by the said treasurer in the presence of the Public Service Commissioners for the First District, or such of them as shall attend, at the time and place of said sale specified in said public advertisement. It shall be a condition of said sale and the advertisement calling for proposals therefor shall so declare that any bidder may bid as to said bonds for all or none at one price or for all or any part at one price or for portions of said bonds at different prices, and any bidder who shall bid for a portion of said bonds may be required to accept a part of the amount bid for by him at the same rate or proportion as may be specified in his bid, and any bid which conflicts with this provision may be rejected; and if the Board of Directors deem it to be for the interest of the company so to do, it may award the bonds to the bidder offering the highest price for all or for a number of said bonds, provided, however, that if the Board of Directors deems it to be in the interest of said company it may reject all bids. Said Board of Directors may prescribe such other conditions incident to and providing for the proposal for the purchase of said bonds as to said Board may seem fit.

Fifth: The Kings County Electric Light and Power Company and the Edison Electric Illuminating Company of Brooklyn shall keep sep-

arate, true and accurate accounts showing the receipt and application in detail of the proceeds of sale or disposal of the bonds or notes hereby authorized to be issued, and on or before the tenth day of each month the company shall make verified reports to the Commission of its receipts and disbursements of the previous month of the proceeds of the said bonds or notes respectively and said accounts, vouchers and records shall be open to audit and may be audited from time to time by accountants and examiners designated for such purpose by the Commission.

Sixth: None of the proceeds of the aforementioned \$1,900,000 of bonds to be loaned by the Kings County Electric Light and Power Company to the said Edison Electric Illuminating Company of Brooklyn shall be paid by the said Kings County Company to the Edison Company until a demand note or demand notes of the Edison Company heretofore authorized shall be given to the Kings County Company therefor.

Seventh: The authority hereby given to issue such bonds or notes by the Kings County Electric Light and Power Company or by the Edison Electric Illuminating Company of Brooklyn shall apply only to bonds or notes issued by said companies respectively on or before May 31, 1917.

Section No. 5. *Further ordered,* That this order take effect, on the 4th day of December 1916 and, except as provided in subdivision Seventh of Section 4 limiting the duration of the authority to issue bonds or notes herein granted, continue in force until otherwise ordered by the Commission, and that within ten days after service upon them of a copy of this order said Kings County Electric Light and Power Company and said Edison Electric Illuminating Company of Brooklyn notify the Commission whether the terms of this order are accepted and will be obeyed.

Hearings closed November 29, 1916.

O. C. Semple, for the Public Service Commission.

Ingraham, Sheehan & Moran, for the Kings County Electric Light and Power Co. and The Edison Electric Illuminating Company of Brooklyn by *S. F. Moran* and *Ashley T. Cole,* of counsel.

In the Matter of the Hearing on the Motion of the Commission to Determine Whether an Order Should be Made Requiring the NEW YORK RAILWAYS COMPANY to Relay, Repair or Alter the Rails on its Lines at 53rd Street and Broadway.

CASE NO. 2160: ORDER ENTERED DECEMBER 13, 1916

TRACKS—STREET RAILROAD CORPORATIONS—REPAIR OF TRACKS—PROCEEDING DISCONTINUED.—The Order discontinued the proceeding herein as to the repair of tracks of the New York Railways Company at 53rd Street and Broadway.

Hearings closed December 4, 1916.

Arthur DuBois, for the Commission.

James L. Quackenbush, by *Arthur G. Peacock,* for New York Railways Company.

In the Matter of the Complaint of ALBERT MORITZ and others *against*
the EDISON ELECTRIC ILLUMINATING COMPANY OF BROOKLYN.

CASE NO. 1540: ORDER ENTERED DECEMBER 22, 1916

RATES AND CHARGES—ELECTRICAL CORPORATIONS—MAXIMUM CHARGE OF EIGHT CENTS PER K. W. HR.—TUNGSTEN LAMPS ONE-HALF CENT PER KW. HR.—PREVIOUS ORDER ABROGATED.—The Order abrogated an Order entered October 27, 1916, and established for the calendar year of 1917, rates for electricity for lighting purposes of eight cents per kw. Hr. for the first two hours' average daily use of the maximum demand, six cents for the second two hours' average daily use of the maximum demand, and five cents for the excess over four hours' average daily use of the maximum demand, said maximum demand, except when determined by meter, to be assumed to be not in excess of 50 per cent of the consumers' connected load in the case of residence consumers, and 70 per cent in the case of other consumers. The Order prohibited the supply of gem lamps or other lamps of an efficiency of less than one and one-quarter watts per candle power. The charge for installation and renewal of incandescent lamps under lamp service agreement in connection with supply of current was limited to one-half cent per kw. hr. For tungsten lamps of smaller capacity than 50 watts an extra charge was allowed, not to exceed the additional cost and installation of renewal of such smaller lamps. The Order provided, moreover, that during the calendar year of 1917, the rates for power under the maximum demand contract should be eight cents per kw. hr. for the first hour's average daily use of maximum demand, five cents per kw. hr. for the second hour's average daily use of the maximum demand, and three cents per kw. hr. for all current in excess of two hours' average daily use of the maximum demand, said maximum demand, except when determined by meter, to be assumed not to be in excess of 80 per cent of the connected load.

(For the Order of October 27, 1916, and an Opinion adopted on the same day, see 7 P. S. C. R. [1st Dist. N. Y.] 175).

Hearings closed December 22, 1916.

H. H. Whitman, for the Commission.

Parker, Hatch & Sheehan, by *Ashley T. Cole*, *W. W. Freeman* and *P. R. Atkinson*, for the Edison Electric Illuminating Company of Brooklyn.

Albert Moritz, the complainant, in person.

George M. Welch, appearing with Mr. Moritz, but not as attorney.

In the Matter of the Complaint of MANHATTAN BRIDGE THREE
CENT LINE *against* THE BROOKLYN AND NORTH RIVER RAIL-
ROAD COMPANY—"Route, Service and Rates of Fare Between
the Termini of the Manhattan Bridge."

CASE NO. 2063: ORDER ENTERED DECEMBER 27, 1916

DETERMINATIONS OF COMMISSION—OPERATION OF BRIDGE LOCALS AND THROUGH CARS OVER MANHATTAN BRIDGE—MODIFICATION OF ORDER DENIED.—The Order denied the application of The Brooklyn and North River Railroad Company for a modification of the Order entered November 29, 1916, by striking out the words "to wit, the intersection of Bridge Street and Flatbush Avenue Extension" from clause 3 of the Order, which reads as follows:

"(3) That the Brooklyn & North River Railroad Company discontinue terminating the operation of any of its cars at the terminal of the Manhattan Bridge in the Borough of Manhattan or at the terminal of the Manhattan Bridge in the Borough of Brooklyn, to wit, the intersection of Bridge Street and Flatbush Avenue Extension."

(For the Order of November 29, 1916, and an Opinion adopted on the same day, directing the resettlement of an Order entered June 1, 1916, see 7 P. S. C. R. [1st Dist. N. Y.] 242, and for the Order and Opinion of June 1, 1916, see 7 P. S. C. R. [1st Dist. N. Y.] 152).

Hearings closed January 31, 1917.

Arthur DuBois, for the Commission.

Latson & Tamblin, by *Almet Reed Latson*, for Manhattan Bridge Three Cent Line.

C. L. Woody, for The Brooklyn and North River Railroad Company.

Arthur G. Peacock, for New York Railways Company.

In the Matter of the Complaint of HOLLIS CIVIC ASSOCIATION
against THE LONG ISLAND RAILROAD COMPANY.—Extension
of Local Train Service from Flatbush Avenue and Hillside
to Hollis, and Rate of Fare.

CASE NO. 2141: ORDER ENTERED DECEMBER 27, 1916

SERVICE AND RATES—RAILROAD CORPORATIONS—SERVICE AND RATES AT HOLLIS—PROCEEDING DISCONTINUED.—The proceeding herein was discontinued without prejudice, at the request of the Hollis Civic Association, who had asked for an extension of the local service from Flatbush Avenue and Hillside to Hollis, and a reduction in the rate from fifteen cents to ten cents.

Hearings closed December 18, 1916.

E. M. Deegan and *E. J. Crummey*, for the Commission.

C. L. Addison, for The Long Island Railroad Company.

Otto Gillig, for the Hollis Civic Association.

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